The Case-Noted Opium and Excise Acts of All-India and Burma

BY

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PREFACE.

I undertook to publish this book at the request of several of my friends in the Excise Department. My object has been to prepare a handy book containing the Excise Laws of All-India and Burma annotated by a brief summary of the leading decisions of the various High Courts in India and Burma. The subject matter ought therefore to interest not only the Excise officers and the Legal profession but also Contractors, vendors or business men who have to transact business with the Excise Department. The decisions of the various High Courts in India and Burma have been systematically arranged in their proper places, and only such extracts as are or would be useful have been taken and quoted. It is hoped that this will facilitate immediate reference.

The Opium Act being an All-India and Burma Act is given at the onset and the Excise Acts are given in the following order; The Madras Act, The Bombay Act, The Bengal Act, The Punjab Act, the U. P. Act and the Burma Act. I have not considered it necessary to give the C. P. Act or the Act that prevails in the Native States as that would swell the size of the book considerably. A table of contents is prefixed to each Act.

At the latter part of the Book, I have given extracts of cases decided under the C. P. Excise Act, the Bihar and Orissa Excise Act and of a few of the cases decided under the Old Excise Act XII of 1896. I have taken care to see that no authority is quoted which has been over-ruled as far as possible, and this brings the case law to the year 1925; no reference to the Proceedings of the various Boards of Revenue has been made.

An exhaustive index has been given at the end of the book for ready reference.

It is hoped that the book will be found quite useful to all Excise Officers and Legal Practitioners.

K. V. SRINIVAS.

The Opium Act 1878.

ACT No I OF 1878

[9th January, 1878.]

An Act to amend the law relating to Opium.

[As modified up to the 1st July, 1910]

Preamble.

WHEREAS it is expedient to amend the law relating to opium; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Opium Act, 1878.

Local Extent.

It shall extend to such local areas[1] as the Governor General in Council may, by notification in the Gazette of India, from time to time direct;

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[1] For the Statement of Objects and Reasons, *see* Gazette of India, 1877, Pt. V, p. 615; for Proceedings in Council, *see ibid*, Supplement, pp 3015 and 3039; *ibid*, 1878, pp. 53 and 82.

[illegible] Santhal Parganas by the Sonthal Parganas [illegible] nded by the Sonthal Parganas Justice and [illegible] Vol. I, in British Baluchistan, by the [illegible]al Code, and in the Angul District, by [illegible]en. Code, Vol I, p. 257.

It has been declared in force in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (13 of 1898), s 4 (*1*), Sch. I, Bur Code.

The Act is supplemented in Burma by the Burma Opium Law Amendment Act, 1909 (7 of 1909), Bur Code

[2] It has been extended by notification in the Gazette of India to the following local areas from the date specified against each —

(1) Ajmer-Merwara, from 2nd August, 1879, *see ibid*, p. 460; *see* also Aj. R. and O;

(2) Assam, from 1st April, 1879, *see ibid*, p 259;

(3) Bengal (which then included the districts now forming part of the Province of Eastern Bengal and Assam) from 22st August, 1878, *see ibid*, p 526.

(4) Bombay Presidency, from 1st April, 1878, *see ibid*, p. 231;

(5) Central Provinces (which then included the District of Sambalpur now transferred to Bengal), from 28th June, 1879, *see ibid*, p 441;

(6) Coorg, from 1st April, 1882, *see ibid*, 1882, Pt. I., p 135;

(7) Lower Burma, from 29th March, 1879, *see ibid*, 1879, Pt. I, p. 75;

(8) Madras Presidency, from 1st July, 1880, *see ibid*, p 513;

(9) the Punjab, from 1st April, 1880, *see ibid*, 1880, Pt. I, p 16; and

(10) United Provinces of Agra and Oudh, from 2nd February, 1878, *see* Gazette of India, 1878, Pt I, p 68

Ss 3—5 and 9—16 have been extended under s 10 (*1*) of the Burma Laws Act, 1898 [illegible] with the [illegible] 90 in the [illegible] respectively,

Commencement

And it shall come into force in each of such areas on such day as the Governor General in Council in like manner directs in this behalf.

2 [*Repeal and amendment of enactments*] *Rep. by the Repealing and amending Act*, 1891 (*XII of* 1891), *and the Repealing and Amending Act*, 1894 (*IV of* 1894)

Interpretation clause

3 In this Act, unless there be something repugnant in the subject or context,—

"opium" includes also poppy-heads, preparations or admixtures of opium, and intoxicating drugs prepared from the poppy

"Magistrate" means, in the Presidency-towns, a Presidency Magistrate, and elsewhere, a Magistrate of the first class or (when specially empowered by the Local Government to try cases under this Act) a Magistrate of the second class:

"import" means to bring into the territories administered by any Local Government from sea, or from foreign territory, or from a territory administered by any other Local Government

"export" means to take out of the territories administered by any Local Government to sea, or to any foreign territory, or to any territory administered by another Local Government

"transport" means to remove from one place to another within the territories administered by the same Local Government

Beinchi —

The word "Beinchi" means opium half consumed or that portion of the opium which is left behind in the opium pipe after smoking once or twice Held that "Beinchi was a preparation of opium if preserved for use, and possession of Beinchi illegal under S 4 and punishable under S 9

U B R Vol I 133=1 Bur 619

Beinchi —

The refuse of the opium pipe, which is ordinarily called Beinchi or Pyaungchi, is when removed from the pipe and reserved for further use, a preparation of opium within the meaning of S 3. Therefore its possession is illegal under S 4 and the rules framed under the Act, and punishable under S 9

L B R 617 (1872—1892)

[1] For notification empowering Magistrates of the 2nd class in Madras to try cases under the Act *see* Fort St. George Gazette 1880, Pt I p 472

Kunbon —

Opium, as defined in the Act, includes admixtures of it Held that Kunbon being an admixture of opium, the possession of it is illegal under S 4, irrespective of the method in which it was obtained

L B R 619 (1872—1892)

Special empowering —

The petitioner and others were convicted of an offence under the Opium Act and sentenced to various terms of imprisonment by the 2nd Class Magistrate of Negapatam purporting to act under the authority of a Notification dated 12—10—1880 issued by the Government of Madras empowering all Second Class Magistrates to take cognisance of offences under the Opium Act The 1st petitioner preferred a revision petition to the High Court contending that the 2nd Class Magistrate had no jurisdiction to try the case, that he was not specially empowered within the meaning of S 3 of the Act, that the notification amounts to a general investiture, that special investiture must be by reference to the individual, and that the Notification is *ultra vires* inasmuch as the effect of it is to enlarge the term Magistrate as defined in the Act

Held —" The question has been raised whether the 2nd Class Magistrate who tried this case acted without jurisdiction in trying a case under the Opium Act In definition 3 of the Act, a Magistrate has been defined as a Presidency Magistrate, a Magistrate of the First Class or (when specially empowered by the Local Government to try cases under this Act) a Second Class Magistrate Now it is conceded that this particular Second Class Magistrate has not been empowered by name or by office by any notification issued by the Local Government under the Opium Act The only notification is that published in the Fort St George Gazette, Part I, dated 12th October 1880, whereby the Governor in Council empowered all Magistrates of the 2nd Class to try cases under the Opium Act of 1878

The question, therefore, is whether this investment of powers was an act of "specially empowering" Magistrates of the 2nd Class, for if it was not so, it appears that the Local Government were not acting within their powers.

S 39 of the Cr P C throws light on what is meant by specially empowering persons

It declares that the Local Government may empower classes of officials generally by their official titles or persons specially by name or in virtue of their office When, therefore, a class of officials is invested with powers to try certain offences, it would appear that they are "generally" empowered The word "generally" is in contrast to the word "specially" which is used in speaking of individuals.

It is urged by the Public Prosecutor that the power to try offences under special or local enactments is itself a special power and that persons so invested with powers, may be described as specially empowered, but this is not the sense in which I understand the Imperial Government to have used the word in framing the section It follows that the trial was without jurisdiction We set it aside and order the 1st accused to be retried by such First Class Magistrate as the District Magistrate may direct "

Seshagiri Iyer, J —I agree

Mahom d Khasim Vs *Emp (1915) M W N 269=28 I C 156*

Special Empow ring —

The only point raised in this Criminal revision case was that the Magistrate who tried the case, the Second Class Magistrate of Thirumangalam, had not been empowered to try cases under the opium Act I of 1878 as required by S 3 of the Act

Held=We are referred to a Notification of Government published in the Fort St George Gazette under date 4—6—1915 which empowers the 2nd Class Magistrates mentioned therein by virtue of their office to try cases under the opium Act The 2od Class Magistrate of Thirumangalam is mentioned in the list appeoded to the Notification We entertain no doubt whatever that this is a "special empowering' of the person holding that office in virtue of his office within the meaning of S 39 Cr P C and would satisfy the requirements referred to by the learned Judges in Mahomed Khasim vs Emp (28 I C 156=2 L W 233=1915 M W N 269)

Allaga Pillai Vs *Emp (M) 24 Cr L J 846=74 I C 958*

Importing Opium—Jurisdiction of 2nd Class Magistrate

A Second Class Magistrate refused to take up a case of importing opium into British India without a license, although empowered under S 191 Cr P C and S 3 of the Opium Act to try the case His reason was that the gravity of the offence required severer punishment than he was competent to inflict Held that the order of the Magistrate was illegal and he should have taken up the case

Gema Patha Rat Un Cr C 375

Transport —

The Accused who carried oo business as a chemist and druggist in Madras sent his servant to Sholavaram in the Ponneri Taluk to buy four pollums of opium from a licensed vendor, The servant purchased the opium and brought it to Accused at Madras The Accused had a license from the Collector for the possession of opium as a medical practitioner The quantity of opium which he may have at one time under the license was limited to one seer or 8 pollums

Held that S 3 of the Act absolutely prohibits the transport of opium, which is defined to mean the moving it from one place to another except in the manner provided in the Act, and the only provisions under the Act allowing transportation are contained in Rules VIII to XIII which only apply to licensed importers, farmers, and licensed vendors, under none of which classes does accused come By sending his servant to bring opium from Sholavaram accused was clearly transporting opium within the meaning of the Act, and the license he holds does not authorise it expressly or impliedly Whether, if Accused had carried the opium himself, the license to possess the opium would necessarily imply the right to transport it with him, and so over ride the prohibition of transport, is a question which does not arise in this case Conviction is right

Q E Vs Ramanujam I Weir 834=13 Mad 191

Prohibition of poppy cultivation and possession etc of opium

4 Except as permitted by this Act, or by any other enactment relating to opium for the time being in force, or by rules framed under this Act or under any such enactment, no one shall—

(*a*) cultivate the poppy ,
(*b*) manufacture opium ,
(*c*) possess opium ,
(*d*) transport opium ,
(*e*) import or export opium , or
(*f*) sell opium

Power to make rules to permit such matters

5 The Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by notification in the local Gazette, make rules[1] consistent with this Act, to permit absolutely, or subject to the payment of duty or to any other conditions, and to regulate, within the whole or any specified part of the territories administered by such Government, all or any of the following matters —

(*a*) the cultivation of the poppy ;
(*b*) the manufacture of opium ,
(*c*) the possession of opium ,

[1] For rules made under this section for—

(1) Ajmer Merwara *see* Gazette of India 1904 Pt II p 339 *ibid* 1906 Pt II p 1452 and *ibid* 1909 Pt II, pp 974 and 1005,

(2) Assam *see* Notification No 699-R, dated the 21st February 1899 Assam Gazette, 1899 Pt. II p 86,

(*d*) the transport of opium ;

(*e*) the importation or exportation of opium ; and

(*f*) the sale of opium, and the farm duties leviable on the sale of opium by retail :

Provided that no duty shall be levied under any such rule on any opium imported and on which a duty is imposed by or under the law[1] relating to sea-customs for the time being in force or under section 6.

Holder of a cultivator's license—consumption by —

Held that the holder of a cultivator's license is not prohibited by rule 9 of the Punjab rules framed under S 5, from consuming the opium which he has cultivated or of which he is lawfully possessed under his license.

Chanda Singh 12 P R 1884 Cr

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(3) British Baluchistan *see* Gazette of India, 1898, Pt II, p 123,

(4) Bengal, *see* Ben Local Stat R and O, Vol II,

(5) Bombay, *see* Bom R. and O and Bombay Government Gazette, 1897, Pt I p 1084 and *ibid*, 1901, Pt I, p 148 and *ibid*, 1903 Pt I, p 134,

(6) Burma, *see* Burma Gazette, 1910, Pt I, p 448,

(7) Central Provinces, *see* Central Provinces Gazette 1907, Pt IV, p 172,

(8) Coorg *see* Coorg District Gazette Extraordinary, dated 15th February, 1898 p 2, *ibid*, 1907, Pt I p 17, for notification bringing morphia within the purview of the opium rules *see* Coorg District Gazette, 1908, Pt I, p 179

(9) Madras *see* Fort St George Gazette, 1909 Pt I, p 1315 and subsidiary Rules by Board of Revenue thereunder, *see ibid* Supplt to Pt II, p LA,

(10) Punjab, *see* Punjab Gazette 1900 Pt I, p 892, *ibid* 1901, Pt I, p 512 *ibid*, Pt. III, pp 1150 and 1151, *ibid*, 1907 Pt I, p 502

(11) United Provinces of Agra and Oudh *see* North Western Provinces and Oudh Gazette 1898, Pt I, p 562, amended North Western Provinces and Oudh Gazette, 1901, Pt I, p 211, *ibid*, 1901, Pt. I, p 528, *ibid*, 1904 Pt I, p 629,

(12) the North West Frontier Province, *see* Gazette of India, 1903 Pt II, p 882 *ibid* 1907, Pt II, pp 1106 and 1107,

(13) the Myelat in conjunction with ss 3, 12, 13 and 14, *see* Burma Gazette, 1900, Pt I, p 477,

(14) the civil stations of Taunggyi and Lashio in Upper Burma *see* Burma Gazette, 1900, Pt I, pp 478 and 799 respectively

[1] *See* the Sea Customs Act, 1878 (8 of 1878) (Chapter VIII), Genl. Acts, Vol II.

Duty on opium imported by land.

6. The Governor General in Council may, from time to time, by notification in the Gazette of India, impose such duty as he thinks fit on opium or on any kind of opium imported by land into British India or into any specified part thereof, and may alter or abolish any duty so imposed.

Warehouse opium.

7. The Governor General in Council may, by order notified in the Gazette of India—

(*a*) authorize any Local Government to [1]establish warehouses, for opium legally imported into, or intended to be exported from, the territories administered by such Local Government, and

(*b*) cancel any such order.

So long as such order remains in force, the Local Government may, by notification published in the official Gazette,—

(*c*) declare any place to be a warehouse for all or any opium legally imported, whether before or after the payment of any duty leviable thereon, into the territories administered by such Government, or into any specified part thereof, intended to be exported thence, and

(*d*) cancel any such declaration

An order under clause (*b*) shall cancel all previous declarations under clause (*c*) of this section relating to places in the territories to which such order refers.

So long as such declaration remains in force, the owner of all such opium shall be bound to deposit it in such warehouse.

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[1] For notifications issued under this section *see* Gazette of India, 1894, Pt I p 657, *ibid* 1894, p 834, *ibid* 1896, pp 146 and 570, and *ibid*, 1900, p 434 (exempting poppy-heads imported into the Punjab)

As to duty on opium imported in the Punjab, *see* list of notifications on p 81 of the Punjab, List of Local R and O and Genl Stat R and O Vol IV

As to rates at which opium shall be sold in the United Provinces at Government Treasuries, *see* North Western Provinces and Oudh Gazette, 1893, Pt I, p 495

In Ajmer-Merwara in respect of Malwa opium not being poppy heads, *see ibid*, 1904, Pt I, p 238, and imposing duty on opium imported into the Punjab or the North-West Frontier Province, *via* Ajmer, *see* Aj Loc R and O, Vol I and Genl Stat R and O, Vol IV.

[2] For notification authorizing the Government of Bombay to establish a warehouse under this section, *see* Bom Loc. R and O.

Power to make rules relating to warehouse

8 The Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by notification in the local Gazette, make[1] rules consistent with this Act to regulate the safe custody of opium warehoused under section 7; the levy of fees for such warehousing; the removal of such opium for sale or exportation; and the manner in which it shall be disposed of, if any duty or fees leviable on it be not paid within twelve months from the date of warehousing the same.

Penalty for illegal cultivation of poppy etc

9. Any person who, in contravention of this Act, or of rules made and notified under section 5 or section 8,—

(*a*) cultivates the poppy, or

(*b*) manufactures opium, or

(*c*) possesses opium, or

(*d*) transports opium, or

(*e*) imports or exports opium, or

(*f*) sells opium, or

(*g*) omits to warehouse opium, or removes or does any act in respect of warehoused opium,

and any person who otherwise contravenes any such rule,

shall, on conviction before a Magistrate, be punished for each such offence with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both,

and, where a fine is imposed, the convicting Magistrate shall direct the offender to be imprisoned in default of payment of the fine for a term which may extend to six months, and such imprisonment shall be in excess of any other imprisonment to which he may have been sentenced

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[1] For rules issued under this section in Bombay, *see* Bom R and O, Vol I, p lvi, and Bombay Government Gazette, 1907, Pt I, p 814

S 5 Rules 11 21 Liability of Cultivators S 9 (a) —

The accused were poppy cultivators They were prosecuted for illicitly cultivating poppy under rule 21 made under S 5 of the Act as they did not possess cultivator's licenses Held they were not liable as it was the Patwari who omitted to furnish them

Sach i Singh 46 P R 1885 Cr

Chandul—What is—Bombay Opium Rules Ss 5 9 (b) —

Chandul means opium dissolved in water and boiled so as to be smoked Held that it cannot be said that a person makes a preparation or admixture of opium within the meaning of Ss 5 and 9 of the Act, and S 35 of the rules framed under the Act, for which a license would be required, by merely dissolving in water, opium which he has legally purchased for his own use in smoking

Sheik Hussain Allauddin Rat Un Cr C 284

Manufacture of Opium S 9 (b) —

Where a person converts opium into "Chandu," another form of intoxicating drug he cannot be said to have manufactured "Opium

Mussamat Pirandetti 13 P R 1881 Cr

Bombay Opium Rules 3 & 4 Cl 1—Manufacturing of Chandul S 9 (b) —

The accused purchased opium from a licensed vendor and made a preparation called chandul for his own domestic use He was convicted of an offence in contravention of the rules Held that the rules 3 and 4 Cl (1) read together, must be understood as permitting the manufacture of chandul by a bonafide purchaser for his own use

Kanglo Asav Cr Rg 42 of 1893

Punjab Excise Manual R 37 (d) what is— Preparation and Admixture' S 9 (b) —

One Mussamat Hamiri was making a preparation of opium called Madhak which is made by placing a small quantity of opium together with barley husks in water and causing the water to evaporate The Madhak when dried is smoked The quantity of opium in the water was very small, according to Mussamat Hamiri as much as would go on a two anna bit, while the Magistrate says, 4 or 5 rattis Admittedly the amount of opium of which Hamiri was found in possession was within the legal limit, and equally the Madhak when prepared would have also been within the legal limit She was found in possession of a solution of opium in water weighing 5 tolas The Magistrate found that this was a preparation of opium, and as the weight exceeded the permit limit of 2 tolas, convicted the accused under S 9 for a breach of rule 37 (d) of the rules framed under the Act, and sentenced her to pay a fine of Rs 25

The Sessions Judge referred the case to the High Court on the following grounds The word preparation has 2 meanings, (1) abstract—the act of preparing, (2) concrete, the thing prepared It is in the latter sense, that the word is used in rule 37 (d) The substance prepared or preparation in this case is the Madhak, and the stage at which the mixture of opium barley husks and water was seized is not a preparation, *i e*, not the finished article, but something in course of preparation The word "admixtures' does not help because what was found was a solution If the weight of the water be excluded the weight of the admixture is well within the legal limit If it is not an offence to possess a certain quantity of opium it is hard to see why it is an offence, to possess the same quantity dissolved in water

Held "as to the word "preparation ' I agree with the view taken by the learned Sessions Judge, and hold that here it designates a completed or manufactured article and not an article in process of manufacture, the test being whether the stage has been reached at which it can be used So also the word ' admixture ' in my opinion refers only to a completed article and can only be applied after the mixing has been finished and not earlier It is unnecessary to define the precise difference between an "admixture and a "preparation ' There is a difference, but the articles designated by both words only come within the scope of their respective definitions when they have been prepared or mixed as the case may be In the intermediate stages, an offence has only been committed if the amount of opium used in the manufacture is more than that permitted by law I therefore acquit Mussamat Hamiri

Mussamat Hamiri Vs Emp 4 L 12=73 I C 700

Beinchi—Possession of—S 9 (c) —

The Opium Rules of 1910 include ' Beinchi ' in what is there called 'defined opium' and allow the possession of such opium by a non Burman up to 3 tolas in weight if bought by him from a licensed vendor

Emp Vs Ah Pein Shok (U B R)—15 Cr L J 532=24 I C 844

Possession of Opium—S 9 (c) —

The 2nd accused left opium contained in a locked up box in the house of the 1st accused The latter admittedly knew there was opium in the box and the box was in his custody in his house Held that 1st accused was rightly convicted under S 9 (c) of the Act and that he was in possession of the opium

In re Ellore Vyammal 2 M W N 361=9 I C 1019

Possession—S 9 (c) —

Held that the "Possession" in S 9 of the Act means possession with knowledge No presumption arises against the accu ed unless and until soch possession is proved

Kalu 16 C P L R 13 See also 1 Bur. 573—17 C P.L R. 75

Possession—S 9 (c) —

The possession contemplated by S 9 Cl (c) is guilty or Criminal possession Where therefore a person is accused of being in illicit possession of opium under this section, held that the fact that such opium was found in that portion of the dwelling house which is in the accused s sole occupation, gives rise to a *prima facie* presumption of his guilty possession

Ali Naki Khan—S C 236 Oudh

Retail Vendor found on a Ry Platform with opium —

Whether possession lawful—S 9 (c) —

The Accused was captured on the Railway Platform at Amritsar with 11 seers 9 chataks of opium in his possession and was sentenced by the first Court under S 9 (c) to imprisonment and fine The Sessions Judge on appe l acquitted the Accused on the ground that he held a license for retail sen at a station ten miles from Amritsar, and that his possession of the opium w lawful

The Crown appealed against the acquittal Held that [illegible] opium which may be in the possession of any person is detern issued by Government under the powers conferred by S Rule 18 covers the case of a retail vendor of opium The ef is that a person licensed to sell opium in retail may posses opium subject to the conditions of his license, subject also that he shall have obtained the opium in a certain specific certain sources In this case, there is no suggestion that obtained from improper sources The only point is whethe of opium was in contravention of the conditions of his lic n tion of the Financial Commissioner directed that certain a be made in the forms of license (No 153 dated 12—7—191 carelessness a license of the old pattern was issued t t license by which alone his conduct is to be judged regarding the place in which or at which the opium t The condition which should have been inserted in th not present therein Appeal dismissed

Servant's possession on Master's behalf—S 9 (c) —

The Accused, a Burman servant, was found in possession of 3 tolas of opium It was proved that he was possessing it on behalf of his master, a Chinaman Held that mere possession by a servant does not render him liable for punishment under S 9 (c) Held further that the opium Rules do not provide for the possession of more than 3 tolas of opium by one person nor for the joint possession by several persons of more than that quantity

U B R (1897—1901) Vol I 232

Possession of opium by servant—Conviction of Master for export—S 9 (c) and (e) —

The Police received information that N and his servant A had gone to a place to buy large quantities of opium which they intended to export to Burma N entered the train at a station He was searched promptly but only a very small and legitimate amount of opium was found on him The servant A entered the train at the next station where he was arrested and searched with the result that 10 seers of opium were found concealed in his bed A admitted at the trial that the opium was found on his person, but endeavoured to exculpate himself by saying that he was in possession of it on behalf of his master and under his directions

On these facts N was convicted of offences of being in possession of opium unlawfully and also of exporting the same unlawfully, and sentenced to the maximum S 9 clauses (c) and (e)

The Sessions Judge acquitted him of the offences

On appeal by Government held that as the opium was found in the possession of A it was for the prosecution to prove affirmatively and clearly that the possession of A was merely that of a servant acting under the authority of his master N The prosecution should further prove that the servant was in possession on his master's behalf and with his master's authority, the mere fact that A and N were in each other's company at the time being quite compatible with the suggestion that A was doing some private smuggling on his own behalf A may be a poor man who possibly could not afford to purchase such a large quantity of opium, but it does not follow that A was not acting on behalf of his employers other than N

Assuming for the sake of argument that N was in unlawful possession of opium through his servant A, and that he intended eventually to export it, it cannot be held that he was guilty of the offence of exporting it S 9 (e) Appeal rejected

Emp Vs Nawab 17 Cr L J 194=34 I C 306

ssion of opium several days after last purchase. Presumption—
S 9 (c) and S 10

The accused Pawyan was found in possession of 3 tolas of opium on 9th June From the consumption slip in his possession, it was found out that he had purchased 3 tolas of opium on the 4th June The Magistrate presumed that he must have consumed ½ tola a day and that the 3 tolas found in his possession could not be opium purchased from the Government The accused in defence pleaded that he had borrowed opium from his friends and that he had not consumed the opium he had purchased from the shop on 4th June The Magistrate convicted him Held that the presumption under S 10 of the Act did not apply to a case of this kind, and that the Magistrate was not justified in drawing the inference which he drew from the proved facts

Pawyan 4 L B R 314

Rules framed under S. 5—Rule 4 iii (c)—joint possession of Chandul—

Liability of owner of den—non liability of smokers—S 9 (c) —

The owner of an opium smoking den was convicted of possessing 103 tolas of 'chandul' contrary to Rule 4 (iii) (a) of the Rules under S 5 of the Act 12 others who were found smoking 'chandul' in the opium den were also convicted for possessing opium contrary to rule 4 (iii) (b) and (c) of the rules under Section 5, as provided by S 9 (c) of the Act

The owner did not appeal, but the latter contended that the 103 tolas of chandul belonging to the owner were not in their possession either jointly or separately, and that there was no evidence to show that any of them was actually in possession jointly or separately of more "chandul' than allowed by the rules *i e*, of more than 'half quarters' of a tola as prescribed in rule 4 (iii) (b), and that they cannot legally be deemed to have been in possession of more than "half quarters of a tola without actual proof of the fact, as rule 4 (iii) (c) is *ultra vires* being a rule of evidence and not a rule strictly under S 5 of the Act

Held—that there is no warrant for prescribing a presumption to the contrary from the mere fact that they were all found in an opium den by rule 4 (iii) (c) under S 5 of the Act Such a presumption would amount to a rule of evidence as to the fact of the possession, and not to a rule as to the conditions of possession contemplated by S 5 of the Act The appellants are entitled to have their convictions reversed as based on rule 4 (iii) (c) which must be held *ultra vires* of S 5 of the Act Convictions set aside

Gandalal Murarji Vs Emp (S) 16 Cr L J 136=27 I.C. 200

Illegal possession of a black substance containing traces of opium—whether sufficient for conviction—S 9 (c) —

The charge against the Accused was that they illegally possessed and sold opium, contrary to the provisions of the Act. It appears that there were 3 pieces of black substance which weighed about 2½ seers, and the prosecution was lodged upon the assumption that the whole of this substance was opium. On analysis, the analyst reported that they contained only traces of opium and hardly more than one per cent. Held that inasmuch as in a criminal prosecution, the prosecution have to prove their case which was that the Accused was in possession of 2½ seers opium, and it turns out that the 2½ seers were not opium, but simply contained traces of opium, and there is no evidence that the traces can be extracted from the larger mass, the prosecution fails

Mahomed Kazi Vs Emp (Cal.) 35 I.C. 972.

Opium in a boat—Liability of master and crew—Ss 9 (c) 10 & 11 —

One C was the master of a boat and the other accused in the case were its crew. On a search of the boat 50 tolas of opium were found in the Cargo. There was no evidence to indicate how the opium came there nor was there evidence that the master or the crew knew that it was there. Held that C the master of the vessel being in possession of the vessel was in possession of the opium and therefore liable to be convicted under S 9. Held further that as the crew had no right to handle the cargo except with the permission of the master, they could not be held to be in possession of the opium.

2. There is no reservation in favour of a common carrier in S 10 of the Act.

3. The vessel cannot be confiscated because no improper conduct could be attributed to the owner.

Chedi Mala 8 C.W N. 349.

Opium in boat—Liability of crew—S. 9 Cl. (c) —

The accused were two of the crew of the boat in which contraband opium was found It was found that they were neither the owners nor jointly interested with them. Held that the mere fact of the finding of the opium was not sufficient to attribute to them possession within the meaning of S 9. For the purpose of S 9 Cl. (c), nothing is necessary beyond possession of opium; no particular frame of mind of the person found in possession is essential to contribute the offence.

Govt. of Eastern Bengal Vs Sirajuddin 37 Cal. 25=5 I.C. 555=14 C. W. N. 308.

Liability of cart man carrying opium—S 9 (c) —

The Accused No 1 engaged Accused No 2 with his cart to carry cumin seeds from Rampur to British India On a search, it was found that illicit opium was concealed in the cumin seeds and thereupon both were convicted under S 9 (c) Held that in the absence of proof that A2 knew that A1 was transporting opium in his cart, his conviction must be set aside

Narsidas Rat Un Cr C 378

Liability of Boatman taking a lascar to a steamer—

Lascar having opium in possession—S 9 (c) —

The petitioner M a boatman took over one Abdul Rashid, a lascar of a steamer to the said steamer which was to start at 9 A M next morning. The Excise Officers on information that the crew of the steamer were smuggling opium kept watch at 2 A M, seized the boat of the petitioner M Then Abdul Rashid threw out a bundle into the water which was subsequently recovered and found to contain 4 seers of opium Both Abdul Rashid and M were tried under S 9 (c) and sentenced to 6 M R I +300 Rs fine and 2 M. R I +100 Rs respectively

It was urged in revision on behalf of M that he was only a common carrier and there was nothing to show he was aware that the passenger had opium with him On behalf of the crown it was contended that in a prosecution under S 9, it shall be presumed until the contrary is proved that all opium for which an accused person is unable to account satisfactorily is opium in respect of which he has committed an offence

Held that according to the prosecution evidence itself the opium was with Abdul Rashid, and he threw it into the river It places no liability on M to give any satisfactory account and he cannot be convicted under S 9 (c) The fact that Abdul Rashid was going to the steamer at 2 A M, at night tho' the steamer was not going to start till 9 A M the next day does not necessarily raise any suspicion in the boatman's mind, as people go to steamers at all times

Mukbal Ali Vs Emp (Cal) 59 I C 133

Possession of Railway receipt for parcel of opium—S 9 (c) —

A Railway Receipt for a parcel which contained opium was found in the house of the Accused, addressed to him He had carefully secreted it in his box which had been locked He was found guilty under S 9 (c) of being in possession of a quantity of opium without a pass or license The question was whether the possession of the Railway Receipt by the production of which he might have obtained delivery and physical possession was

Possession of Illicit opium—Sec 9 (c) —

The Accused a shop keeper lived next door to a licensed opium seller The latter was in the habit of leaving a locked box containing the stock of opium, the book, and the license, in the house of the Accused when he went home in the night because he was not sleeping in the shop It was found that he used to take the key with him and the box was left with the Accused for safe custody. Held that this custody did not amount to unlawful possession by Accused of opium within the meaning of S 9

R 2 L B R 136 *Gajadhar 25 All 262*

Custody of Burman servant on behalf of his master a Chinaman—

Whether offence—Sec 9 (c) —

The Accused Pya Gyi, a Burman, was arrested by an Excise Officer on the road with a packet containing 3 tolas of Government Excise opium and the opium consumption book belonging to one Tan Kon, a Chinaman, on his person His explanation was that Tan Kon had sent him to buy the opium for him Tan Kon gave evidence that the Accused was his servant, that being ill and unable to go himself he sent the accused to buy the opium for him, through another Chinaman The Magistrate convicted the Accused under S 9 (c) and fined him Rs 5

On revision, it was held that the custody of a servant is not such possession as the opium Act and Rules contemplate, that it is evident from direction 71 that possession by a servant for his master is not legal unless the servant is entitled to possess on his own account goes beyond the Act and Rules, and is, therefore, not legally binding Conviction set aside

Emp Vs Nga Pya Gyi 4 I C 823

Emp Vs Gajadhar 25 All 262
Ma Pi Vs K E 2 L B R 136 } *Followed*

Joint Possession—S 9 Rule 16 —

In all cases of joint possession of more than one tola of opium, held that it is necessary to ascertain (1) that a certain number of people are living in the house (2) they made a joint purchase and, (3) that one of them was in possession for the use of all

31 P R 1902 See also 34 P R 1905

Joint possession of one Tola and 5¼ mashas of Chandu—Whether offence—

Ss 5 and 9 (c) —

The applicant Ram Rakha and Mussamat Jiwan were held by the Magistrate to have been in joint possession of 1 tola 5½ mashas of chandu The question was referred to the High Court owing to the conflict of decisions in Q E vs Salam, 13 P R 1897 and Q E vs Wazir Singh, 10 P R 1901.

Held that a decision on the conflict of these rulings has been rendered unnecessary by the amendment of Rule 38 (2) under Act I of 1878, opium Act, which provides specifically for the matter in question Under this amended rule the amount which two or more persons may without a license at one time have in their possession collectively is limited to one tola Therefore under this rule, the decision of the Magistrate was according to Law Appeal dismissed

(Punjab) Ram Rakha Vs Emp —46 I C 46

Joint possession—plea of—S 9 Rule 16 —

What constitutes an offence under S 9 Rule 16 is the possession of more than one tola of opium or intoxicating drugs and it is not the amouot that the person in possession may own himself Where therefore the Accused was found in possession of 2½ tolas of opium, held he was rightly convicted under S 9 tho there were 3 other persons, each using only a fourth of it and the accused s share not over a fourth of it

F 31 P R 1902 Cr *13 P R 1879*

Joint possession—Confession to Excise Officer—Whether admissible—S 9 (c) —

One Wazir Singh was sent up for trial under S 9 upon a charge of having in his possession 7 tolas 1½ mashas of opium which was discovered in an almirah in his house He was acquitted by the Magistrate on the ground that the opium in question was owned jointly by him and the other members of his family consisting of his father and minor sons

It was argued in appeal by Government that the accused was guilty, because he was found in possession of a quantity of opium in excess of what he could lawfully possess for his own personal use, it being perfectly immaterial whether other alleged members of the family used to consume opium along with the Accused or not

Held, that the mere fact that the Accused gave opium to his father and his children to eat is of itself, insufficient to show that he alone was not in possession of the quantity discovered in his almirah The record shows that the Accused admitted before the Excise Inspector that the opium found in his almirah belonged to him, and since the Excise Inspector is not a Police Officer, this statemeot which amounts to a confession in this case, is admissible against him The order of acquittal is set aside and Accused sentenced to 1 M R I

Emp Vs Wazir Singh —(P) 44 I C 588

Joint family—Proof of possession—Search 103 Cr P C —S 9 (c) —

The accused Ganeshi was convicted under S 9 of being in unlawful possession of crude opium He contended in appeal that, (1) the who were called on to attend the search were not respectable

the locality, (2) that his father who was alive was the master of the house, (plea raised for the first time in appeal), and (3) in the absence of good evidence as regards exclusive possession by him he being a junior member of the family he was entitled to be acquitted Held (1) that in a prosecution under S 9 against a member of a joint family who is not its head the burden of proving that the opium found in the common room of the joint family house was in the exclusive possession and control of the particular member of the joint family who is charged with its possession was on the prosecution and (2) that such a defence cannot be discarded on the ground that it was for the first time put forward in appeal and (3) that the Police Officer was bound to call 2 or more respectable inhabitants of the locality to attend and witness the search under S 103 (1) Cr P C

R 15 A 129 *Gan shi 2 O C 99=4 W N 213 (1884)*

Exclusive possession—Proof—S 9 (c) —

The Accused was convicted of illegal possession of opium because it was found in an inner room to which she withdrew when the search party entered an outer room where she was being shampooed According to the finding of the Magistrate the Excise Inspector did not know who was in occupation of the room in question the only evidence on the point was that of the defence which was to the effect that she was a mere visitor residing temporarily in the front room Held it was for the prosecution to prove that she was in the occupation of the inner room where the opium was found and it is impossible to convict her just because opium was found under a bed which is not shown to have been hers and in a pair of men s boots which could not have belonged to her Conviction and sentence set aside

(L B) Ma Mi Vs Emp 2 L B R 136=2 Bur L J 15=75 I C 358

Exclusive possession—Proof essential—S 9 (c) —

The Accused was convicted of an offence under S 9 (c) and sentenced to pay a fine of Rs 100 The opium was found on the roof of the petitioner s cook room

Held it is well established and is an elementary rule founded on common sense that where the place in which an article is found is one to which several persons have equal right of access it cannot be said to be in the possession of any one of them It cannot be said that the place in which the opium was found is not one to which several persons had equal right of access If that be so however the case may stand on law it must be extremely difficult to convict him on facts Conviction set aside

Khusiram Maharaj Vs Emp (Pat) 3 P L T 132=66 I C 328

Sale of Morphia without licens —wh th r off nce—Anti Opium Pills—
Ss 3—9 (d) (f) —

The petitioner was a physician who was selling and transporting pills known as Anti opium pills, which were said to be a cure for the opium-eating habit They contained 2—4 per cent of Morphia As the petitioner had no license to sell and transport Morphia, he was prosecuted for infringing the rules under the Act and convicted of offences under S 9 Cl (d) and (f) by the First Class Magistrate of Umbala

The Sessions Judge upheld the conviction "The question is whether the sale and transport of Morphia without a license is an offence under the Act, and this depends on the question whether Morphia is included in the definition of opium contained in S 3 of the Act, which says that opium includes also poppy heads, preparations or admixtures of opium and intoxicating drugs prepared from the poppy The Courts below have held that Morphia is a preparation of opium but I cannot agree with them Morphia is prepared from opium but there is a clear distinction between a preparation from opium and a preparation of opium Morphia is only one of many ingredients of opium, and I am unable to see how it can be called a preparation of opium when it does not contain the various ingredients which opium contains It would be more accurate to describe opium as a preparation of Morphia than Morphia as a preparation of opium I hold that Morphia is not included in the term 'opium as defined in the Act not being a preparation or admixture of opium or a drug prepared from the poppy Conviction set aside

Sita Ram Vs Emp (P) 59 I C 40

Opium whether includes Morphia—Ss 3—9 (c) —

The question for determination is whether Morphia comes within the definition of opium as contained in the opium Act The 3rd Section enacts that opium includes also poppy heads preparation or admixture of opium and intoxicating drugs prepared from the poppy In Sita Ram vs Emp 59 I C 40 Mr Justice Martineau held that Morphia is not included in the definition, because it is neither a preparation or admixture of opium nor a drug prepared from the poppy The appellant impeaches the correctness of the rule laid down in that judgment and invites us to consider the question *de novo*, and pronounce an authoritative opinion thereon This is an appeal by Government against the order of acquittal by the District Magistrate of Multan

Held—" the evidence recorded by the District Magistrate shows that opium is the inspissated juice obtained from the incised unripe capsules of the poppy, and that Morphia is one of the alkaloids found in opium along with other constituents such as meconic acid, fatty matter, resin, gum, caoutchouc and mineral salts There can be no doubt that Morphia is one of t

components of opium and cannot therefore be called a "preparation or admixture of opium It is however clear that it is a drug prepared by a chemical process from opium which is merely the thickened juice of the poppy, and it can therefore, be properly described as a drug prepared from the poppy It is true that in the process of manufacturing Morphia from the poppy an intermediate substance, namely, opium or inspissated juice of poppy, is prepared but that circumstance does not furnish any ground for holding that Morphia is not prepared from the poppy

We must therefore hold that Morphia is an alkaloid prepared from the poppy, and it is beyond doubt that it is an intoxicating drug While accepting the view expressed in Sita Ram *vs* Emp 59 I C 40=1 L 443, that Morphia is not a preparation or admixture of opium, we are unable to concur in the conclusion that it is not a drug prepared from the poppy We are of opinion that Morphia is an intoxicating drug prepared from the poppy, and that it fulfils the requirements of the definition of opium contained in S 3 of the opium Act We may point out that the Notn No 954 dated 16 10 1916 referred to in the aforesaid judgment has since been cancelled and we do not think that it can effect the conclusion reached by us on the strength of the expert evidence

We accept the appeal and setting aside the order of the Lower Court convict the respondent Robinson under S 9 (c) Having regard to the delay in the disposal of the case and to other circumstances we do not consider it necessary to impose a sentence of imprisonment We sentence him to a fine of Rs 100 in default to 3 M R I

Emp Vs *Robinson—3 L 230=58 I C 612*

Export of opium by Post—Conviction for p ss ssion—Attempt to export—Wh th r offence—Ss 9 c and e —

The accused tendered a parcel containing 458 tolas of opium for despatch to Burma, it was opened by the Sub Post Master in the presence of a Police Constable at the place of despatch and was then sent on to Burma marked "doubtful,' the Excise authorities in Burma having been communicated with, with a view to the identification of the consignee The parcel was not claimed and was sent back to India He was convicted and sentenced to 1 years R I under S 9 (c) for possession of opium and to a fine of Rs 500 for exporting opium under S 9 (e)

Held, on appeal, that the conviction under S 9 (c) was correct, and that as regards the latter, the accused was wrongly convicted, as the parcel was seized by the authorities before despatch and it ceased to be in the Post Office on accused s behalf before it left India for Burma, and therefore it was

not exported Held further, that there was no provision of Law which makes an attempt to export opium punishable, and that S 511 of the Indian Penal Code does not apply

Boston Vs Emp —2 P R 1911=9 I C 682

Illegal transport of opium—Ss 5—9 (d) —

The Accused were licensed retail vendors of opium in the District A They instructed a wholesale contractor of drugs in District B to despatch 2 maunds of poppy heads The latter contractor obtained a Rowana from the Collector of his District and despatched the poppy heads He however did not obtain the permission of the Collector of the District A The accused were thereupon prosecuted and convicted of the violation of Rule 24 Held that the conviction was wrong as it could not be supposed that the Accused authorised or intended to authorise the wholesale contractor to transport the poppy heads otherwise than in accordance with the rules in force, and that further the obligation of getting a pass for transport of opium lay on the transporting farmer and not on the Accused

40 P R 1887 Cr

Transport of opium by licensed cultivator without pass—Ss 3—9 (d) —

The Accused was a licensed cultivator of opium He was convicted under S 9 of the Act for having transported opium from the Hoshiarpur to the Jalandhar District without a pass and for selling it to a retail vendor Held that the Accused transported opium within the meaning of S 3 by taking it from one District to another, (2) that even supposing a licensed cultivator could be held to be a licensed vendor, the Accused was still liable to be punished under S 9 as he had not a pass to transport opium under the rules

Megha 13 P R 1884 Cr

Transport of opium—S 9 (d) —

The Accused Sarwar Khan transported opium on behalf of a farmer of two Taluqs in the same District from one of the two Taluqs to the shops of the same farmer in the other Taluq with permits signed by the farmer In the course of the journey, he was found in possession of opium outside both the Taluqs Under Rule VIII of the opium Rules of 1893, a farmer who desires to transport opium from one Taluq to another of the same District must only when the Taluqs of the District are farmed to different farmers obtain a pass for each consignment from the officer in charge of the Excise Revenue of the District or from the Tahsildar of the Taluqs

In this case, held that the accused was guilty of having trangressed the rule VIII as he was found at a place outside either of the Taluqs with opium

Sarwar Khan 1 Weir 833

Import of opium—S 9 (c) —

The Accused Dhondoo went on business into foreign territory and while there, purchased one annas worth of opium He consumed a portion of it there and brought the rest in his turban into British India He was convicted by the Magistrate under S 9 (c) of importing opium Held that the conviction could not be sustained

Dhondoo Rat Un Cr C 969

Sale by an unauthorised person—S 9 (f) —

Where a person who had taken a license for the sale of opium allowed another person to sell it on his behalf when the latter s name was not endorsed on the license under the Rules framed and published in N W P and Oudh Gazette of 11—6—1893, held the licensee was guilty of an offence under S 9 of Act I of 1878

1 A L J 245

Sale of Morphia without license use in practice —Sale to one's patients— S 9 (f) —

In connection with some other Excise articles, the dispensary premises of the Accused, an approved medical practitioner, were searched and among other things 3 prescriptions were seized The 1st prescription was "Liqr Morphia Hydrochlor MX Aqua oz IV The 2nd was for "Tinct opii" and the 3rd was "Liq Morphia Hydro' The Accused was prosecuted for selling without license from his dispensary at Nawabganj a certain quantity of Morphia in the form of Liq Morphia Hydro and a certain quantity of opium in the form of Tinct opii in contravention of Rules made and notified under S 5 of the opium Act The Magistrate found the Accused guilty with reference to the sale of Morphia Hydro Chlor and sentenced him to pay a fine of Rs 50, acquitted him regarding the 3rd prescription because it was proved that he had given it "gratis' He gave the benefit of doubt and acquitted him on the 2nd prescription because under Rule 53 of the Notification "A qualified medical practitioner may use intoxicating drugs in the course of his practice or may compound or dispense the same for the use of his own patients for bona fide medical purposes

The Magistrate held "Intoxicating drugs mean according to S 2 (10) of the Notification No 562 S R every preparation or admixture of opium or of the poppy but does not include smoking preparations Morphia or its allied compounds or poppy heads The rules relating to Morphia are contained in Notification No 561 S R dated 2—3—1918 made and published under Rule 5 of the opium Act In these rules, Bengal Morphia Rules 1918 the provisions relating to sale are contained in Ss 19 and 20 In these, there is no provision corresponding to Rule 53 of Notification No 562 S R All sales under the Bengal Morphia Rules must be either by a licensed dealer or by a

licensed chemist No man can, therefore, sell Morphia without a license. The Pleader for the defence had placed a good deal of emphasis on provision 6 of the Bengal Morphia Rules which says "an approved practitioner may possess for use in his practice but not for sale Morphia drugs not exceeding in the aggregate 120 grains'

It has been urged that "use in practice' is equivalent to "sale to his own patients". This contentioo the Court is unable to accept

(1) The provision of Rule 6 relates exclusively to the possession of Morphia drugs and cannot in any way govern the substantive law relating to their sale which is regulated exclusively by the provisions of Rules 19 and 20 under the heading V—sale

(2) Rule 6 states that "an approved practitioner may possess for use in his practice but not for sale" An emphatic distinction is made here hetweeo use in practice and sale The arguments that use in practice is a modified form of sale to one s own patients does not seem to he o sonod ooe

(3) There is no provision in the Bengal Morphia Rules corresponding to Rule 53 of the Notification No 562 S R If the legislature iotended to permit sale of Morphia drugs by on opproved practitioner to his own patients they would have provided for it explicitly as they have done in the case of opium aod iotoxicating drugs

(4) Rule 53 of the Notification No 562 S R provides for (1) Use in practice (2) Compounding for the use of ooes own patients (3) Dispensing for the use of one own patients A clear distinction has been made between Case No (1) and the other two cases It would be logical to follow this distinction in interpreting Rule 5 of the Beogal Morphia Rules. Lastly, it is easy to note the distinction between use in practice and serving on a prescription to a man s patient The former comprises cases where Morphia administered to a patient on the spot *e g* in surgical operations or injections by the Medical attendant In the latter case it is a matter of pure chance that the prescribing doctor happens to have a dispensary of his own His duty as a physician ends with drawing up the prescription The patient is at liberty to obtain the medicine in the usual course at a chemist's shop duly licensed to sell under the Act

Sale of Morphia, therefore, without a license is clearly a contraventioo of the Bengal Morphia Rules and as such punishable under the Act " The appeal to the Sessions Judge was rejected In revision, the High Court held the Magistrate was right in convicting the Accused Rule 6 expressly states that an approved practitioner may possess Morphia for use io his practice, but not for sale The Magistrate is quite right in saying that there is a clear distinction between use in practice and sale to one's patients Conviction coofirmed

Jogesh Chandra Lahiri Vs Emp (Cal) 24 C W N 343=56 I C 657

Sale by a servant—S 9 (f) —

A obtained a license to sell opium granted under the opium Act There was oo prohibition in the license against the employment of a servant to sell the same Held that a sale by the servant of the licensee on behalf of his master is oot a sale without license as contemplated in S 9

Zalim—S C 285 Oudh

Sale to Children by servant of licensed vendor—Whether licensee liable—Ss 5 and 9 (f) —

B was a licensed vendor of opium One of the general conditions under which he was licensed to sell was that sales should not be made to children below 14 In his absence his salesman sold opium to a person under 14 Both the salesman and the licensed vendor were convicted under Ss 5 nnd 9 of the Act It was argued that the vendor was not liable for the act of his servant committed by the latter in the course of his employment but without the master s knowledge Held that the licensee was responsible for breaches of the condition of his license tho' not committed with his knowledge and permission It is not a question of intention, *mens rea*, or of knowledge, the mere fact of selling opium in contravention of the conditions of his license constitutes the offence

Babu Lal Vs *Emp —34 All 319=14 I C 666*

S 9 (f) —

The Accused Mahomed Arab a retail seller of opium kept his shop open after 7 P M in contravention of the terms of his license Held that the terms of a licoose issued uoder Ss 5 aod 8 are not to be regarded as part of the rules themselves, and, therefore, an infraction of any of the conditions of a license issued under the rules cannot be considered an infraction of the rules and as such punishable under S 9 (f)

Mahomed Arab—Rat Un Cr C 332

Sale of opium in a quantity in excess of that allowed by law—S 9 (f) —

The Accused a liceosed vendor sold opium in a quantity io excess of that permitted by law, held that the Act was not a mere breach of the license, but was ao offence under the Rules framed under the Abkari Act, and could be punished under S 9 of the opium Act

Chotalal—1 Bom L R 677

Entry of out turn of cultivation—Failure of—Rule 9 (f) —

Where a licensed cultivator omitted to have the out turn of his cultivation eotered on his liceose, held that it was not a contraventioo of Rule 9 (f)

Bur Singh Vs *Emp 10 P R 1893 Cr*

Failure of poppy cultivators to inform the Patwari of the out turn of poppy cultivation—Wh ther offence—Ss 5-9-13 —

The Accused, poppy cultivators, were convicted under S 9 because they omitted to inform the Patwari of the quantity of out-turn of their poppy cultivation Held that there was nothing in the Rules which required a poppy cultivator to inform the Patwari of the out turn of poppy heads as in the rules "opium" is distinct from "poppy heads"

Gurdit Singh—16 P R 1883 Cr

Sale of mor than 2 tolas of opium to one person at one time—Wh ther breach of condition of license or breach of rule—Ss 4—9 (f)—Rule 48 —

The applicant was convicted under S 9 of the Act, of a breach of the Rules, Notification No 954, 16—10—1916, amended 27—3—1917, under the opium Act in that he sold more than 2 tolas of pure opium to one person at one time

It was argued in revision that the applicant's act only amounted to a breach of the conditions of the license, which breach may expose him to penalties under Rule 53 but not conviction under Rule 9 The authority quoted was Bur Singh vs Emp 10 P R 1893 Cr in which it was held that the omission by a cultivator to enter the amount of his cultivation on the back of his license might be a breach of the conditions of the license, but was not a breach of any rule under the Act Held "no doubt if Rule 49 of Notification No 954 dated 16—10—16 as amended on 27—3—1917, stood alone, the argument would be sound The case however, can be distinguished First of all there is a substantive rule 48 which runs as follows "Save as provided by Rules 46 and 47, the sale of opium is permitted only in accordance with the terms and conditions of a license granted as provided in the following Rules Sale in contravention of the conditions of a license is, therefore, a breach of Rule 48 Secondly, by S 4 of the Act, it is provided, that "no one shall sell opium except as permitted by this Act or by Rules framed under this Act" Looking to S 4 of the Act and Rule 48, the applicant is clearly liable to punishment under S 9 The case is clearly distinguishable from that reported in Bur Singh vs Emp, and the application for revision must be rejected

Dowlat Ram vs Emp (L) 33 P R 1919 Cr =54 I C 884.

Liability of Master for acts of servant—Ss 5—9 —

One S K M a licensed vendor of Madak was fined Rs 25 under S 9 for contravening a rule made and notified under S 5 of the Act and embodied in his license, that he "shall not allow any of the drugs to be consumed on his premises" It was proved before the Magistrate that S K M the vendor was not present at the time the drug was consumed on his premises, but that

remuneration for his trouble, they gave Shanker, a fourth of the juice extracted from the poppy heads Shanker was thus in possession of 32½ tolas of opium He was prosecuted and convicted under S 9 rightly. The 3 Accused, licensed cultivators, were convicted under S 9 Cl (f) for selling opium to Shanker. Held that they could not be considered to have sold opium to Shanker so as to contravene S 9 (f) Held, also, that tho' the abetment of possession, in contravention of the opium Act or Rules would amount to an "offence" as defined in S 40 I P C, it could not be said that any of them abetted him as they were cultivators independent of each other and there was nothing to show what quantity was made over by each of them individually

Shanker—4 P R. 1884 Cr.

Preparation of Incorrect Accounts—Whether punishable—Ss 5-8-9 (g) —

M, a licensed opium vendor of Sidbauli, was convicted under S 9 Cl (g) of the opium Act and sentenced to 6 M R I and a fine It appeared that when the Assistant Commissioner of Excise inspected the shop, the accounts kept by him showed a balance of only one tola The vendor tried to smuggle 7½ tolas out of his premises by giving it to another person, who was trying to run away when he was detected and caught On a further search being made, one seer and 55 tolas opium more was found The vendor admitted that he had made false entries to provide against a prospective rise in the price of opium but during the course of the trial the explanation given was that he wanted to keep a sufficient supply for his customers because there were difficulties in getting sufficient opium from the Tahsil

Held, that one of the terms of the license was that he was to keep a correct account of the opium sold or used in his premises for inspection on demand by Excise Officers He contravened that condition and rendered himself liable under the terms of his license to have his permit cancelled He cannot be prosecuted for a contravention of the conditions of his permit, because all that the permit says is that on the infringement of any of the conditions therein, it shall be open to the Collector to cancel the permit, and the licensee shall not be entitled to the fee paid by him for the permit in advance S 9 of the Excise Act renders a contravention of the rules under Ss 5 and 8 of that Act [illegible]shable, but beyond the condition laid down in the license rendering it o[illegible] on the licensee to keep correct accounts, there is nothing [illegible] fr[illegible]der those sections to make the keeping of incorrect [illegible] penal [illegible] While a contravention of the Rules is declared punis[illegible] S. 9, a contravention of the conditions of the [illegible] penalty for such a [illegible] of the money [illegible] vs Q E 26 C.

Failure of poppy cultivators to inform the Patwari of the out turn of poppy cultivation—Whether offence—Ss 5-9-13 —

The Accused, poppy cultivators, were convicted under S 9 because they omitted to inform the Patwari of the quantity of out-turn of their poppy cultivation Held that there was nothing in the Rules which required a poppy cultivator to inform the Patwari of the out-turn of poppy heads as in the rules, "opium" is distinct from "poppy heads"

Gurditt Singh—16 P.R 1883 Cr.

Sale of more than 2 tolas of opium to one person at one time—Whether breach of condition of license or breach of rule—Ss 4—9 (f)—Rule 48 —

The applicant was convicted under S 9 of the Act, of a breach of the Rules, Notification No 954, 16—10—1916, amended 27—3—1917, under the opium Act in that he sold more than 2 tolas of pure opium to one person at one time

It was argued in revision that the applicant's act only amounted to a breach of the conditions of the license, which breach may expose him to penalties under Rule 53, but not conviction under Rule 9, The authority quoted was Bur Singh vs Emp 10 P R 1893 Cr In which it was held that the omission by a cultivator to enter the amount of his cultivation on the back of his license might be a breach of the conditions of the license, but was not a breach of any rule under the Act Held "no doubt if Rule 49 of Notification No 954 dated 16—10—16 as amended on 27—3—1917, stood alone, the argument would be sound The case however, can be distinguished, First of all, there is a substantive rule 48 which runs as follows: "Save as provided by Rules 46 and 47, the sale of opium is permitted only in accordance with the terms and conditions of a license granted as provided in the following Rules" Sale in contravention of the conditions of a license is, therefore, a breach of Rule 48 Secondly, by S 4 of the Act, it is provided, that "no one shall sell opium except as permitted by this Act or by rules framed under this Act" Looking to S 4 of the Act and Rule 48, the applicant is clearly liable to punishment under S 9 The case is clearly distinguishable from that reported in Bur Singh vs Emp, and the application for revision must be rejected

Dwelat Ram vs Emp (L) 33 P R 1919 Cr =54 I.C. 884,

Liability of Master for acts of servant—Ss 5—9 —

One S K M a licensed vendor of Madak was fined Rs 25 under S 9 for contravening a rule made and notified under S 5 of the Act and [illegible] to his license, that he "shall not allow any of the drugs to be consumed on premises" It was proved before the Magistrate that S K M [illegible] was not present at the time the drug was consumed on his premises,

be had left his servant in charge of the shop The Magistrate, however, punished him as he was directly responsible to the Government for the fulfilment of the conditions of his license, and that if he chose to delegate the charge of the shop to his servant, the obligation lay on him to take precautions to see that the rules under which he held the license were observed Held that altho' as a general principle of law a master is not responsible for the acts of his servants unless he expressly command or co-operate in them, still under the circumstances of this case, the vendor was liable for the breach committed by his servant under the rules made and embodied in his license

Shri Kissen Misra 7 C P L R Cr 41

Liability of Master for acts of servant—Ss 5—9 —

The servant of a licensed opium vendor sold a preparation of opium after sunset contrary to the conditions of his master s license This he did in his master s absence and there was nothing to show that the master had directly or indirectly authorised the illegal sale Held that the master was not liable to pay the penalty under S 9

R 13 C L R 336 Bhooban Chandra Sha 11 C L R 464

Unlawful possession of opium by servant of a quantity which the master himself could not possess Liability—S 9 (c) (f) —

The evidence against the 3rd Accused was that he was in possession of 9 seers of opium in an unauthorised place, and was trying to sell it unlawfully, and that neither he nor his master the 1st Accused was entitled to be in possession of that excessive quantity in that place He was convicted under S 9 (c) for illegal possession of opium It was argued in revision of his behalf that his possession was possession of his master and he could not therefore be convicted Held that the master was himself not entitled to be in possession of the opium, and the servant therefore cannot plead possession on behalf of his master Conviction confirmed

(2) The 4th Accused was convicted under S 9 (c) for illegal possession of opium The Sessions Judge altered the finding to the offence of abetting the illegal sale of opium under S 9 (f) of the Act and S 114 I P C maintaining the sentence It was argued in revision that the facts necessary to establish an offence under Cl (c) are so materially different from the facts to be established for an offence under Cl (f) that an appellate Court cannot alter the conviction from one under Cl (c) to one under Cl (f) Held that as the accused was not misled in his defence and as there was no miscarriage of justice caused by the non framing of the charge under Cl (f), the facts to be proved having been disclosed in the trial under Cl (c), there was no reason for interference Unless there is a miscarriage of justice by an omission to frame the charge, there is no ground for revision

(M) In re Mannam Krishna Chetty—17 Cr L J 384=35 I C 816

Servant of a licensed vendor purchasing opium from the Excise Office on behalf of his master and not taking it to the shop—offence—Ss 9 (f) and 10 —

Petitioner Iswar Chandra was the servant of Zahirudin who had a shop at Mahajan where he was licensed under the Act to sell opium On the 23rd March 1909 Iswar bought on behalf of his master, a seer of opium from the Excise Office at Chittagong It was his duty under the rules to transport the opium to the Mahajan within 2 days of the sale to him He did not take it to Mahajan within the time and when asked what had become of it, he said it was stolen He was fined 500 Rs under S 9 (f)

Held on appeal, that the effect of Ss 9 and 10 is that when once it is proved that an Accused person has dealt with opium in any of the ways described in S 9, the onus of proving that he had a right so to deal with it is thrown on the Accused under S 10 But the commission of an act which may be an offence must be proved before the presumption comes into play at all, and it cannot, therefore, be used to establish that fact

The result is that the defective evidence of the sale in this case cannot be supplemented by the presumption in S 10, and the conviction for illicit sale is therefore bad On the other hand, it is clear that on the facts proved, the petitioner might have been convicted of unlawful transport of opium

Iswar Chandra Vs *K E* 6 I C 173 = 14 C W N 710.

Illicit sale of opium—Evidence of sale—S 9 (f) —

Several persons were found in a house, and one of them was smoking Chandu On the premises were also found 3 pipes, 2 iron needles, one pair of tongs and a smoking pillow The quantity of opium, however, found in the house was within the limit allowed by law Held that the circumstances were not strong enough to warrant the presumption that Chandu was being sold on the premises

Mussamat Ajuba - *I A I J 11*

Illicit sale of opium—Evidence of sale—S 9 (f) —

Several persons were found in a room, a few of whom were smoking Chandu There were found in the room, 2 pipes, jars containing about 5 tolas of Chandu, and the usual paraphernalia of a Chandu shop Held that the circumstances disclosed led to only one inference viz that the Chandu found was exposed for sale, and that the persons found in the den were persons to whom Chandu was being sold for smoking purposes

Balir - *1909 A W N 17*

Illegally making over opium—Whether sale—Abetment—S 9 (f) —

The 3 Accused persons were licensed cultivators of poppy They employed one Shanker to prepare opium for them from the juice A

remuneration for his trouble they gave Shanker, a fourth of the juice extracted from the poppy heads Shanker was thus in possession of 32½ tolas of opium He was prosecuted and convicted under S 9 rightly. The 3 Accused, licensed cultivators were convicted under S 9 Cl (f) for selling opium to Shanker. Held that they could not be considered to have sold opium to Shanker so as to contravene S 9 (f) Held, also, that tho the abetment of possession, in contravention of the opium Act or Rules would amount to an "offence" as defined in S 40 I P C, it could not be said that any of them abetted him as they were cultivators independent of each other and there was nothing to show what quantity was made over by each of them individually

Shanker—4 P R 1884 Cr

Preparation of Incorrect Accounts—Whether punishable—Ss 5-8-9 (g) —

M, a licensed opium vendor of Sidhauli, was convicted under S 9 Cl (g) of the opium Act and sentenced to 6 M R I and a fine It appeared that when the Assistant Commissioner of Excise inspected the shop, the accounts kept by him showed a balance of only one tola The vendor tried to smuggle 7½ tolas out of his premises by giving it to another person, who was trying to run away when he was detected and caught On a further search being made, one seer and 55 tolas opium more was found The vendor admitted that he had made false entries to provide against a prospective rise in the price of opium but during the course of the trial the explanation given was that he wanted to keep a sufficient supply for his customers because there were difficulties in getting sufficient opium from the Tahsil

Held, that one of the terms of the license was that he was to keep a correct account of the opium sold or used in his premises for inspection on demand by Excise Officers He contravened that condition and rendered himself liable under the terms of his license to have his permit cancelled He cannot be prosecuted for a contravention of the conditions of his permit, because all that the permit says is that on the infringement of any of the conditions therein, it shall be open to the Collector to cancel the permit, and the licensee shall not be entitled to the fee paid by him for the permit in advance S 9 of the Excise Act renders a contravention of the rules under Ss 5 and 8 of that Act punishable but beyond the condition laid down in the license rendering it obligatory on the licensee to keep correct accounts, there is nothing in the rule framed under those sections to make the keeping of incorrect accounts penal While a contravention of the Rules is declared punishable as an offence under S 9, a contravention of the conditions of the permit has not been declared to be penal The only penalty for such a contravention is the cancelment of the license and forfeiture of the money paid in pursuance of the license In Umesh Chandra Ghose vs Q E 26 C.

571 it has been held that there has been nothing in any of the rules made under S 5 of the Act which would make the preparation of an incorrect account punishable under S 9 The Accused is there acquitted

(O) Malku Lal Vs *Emp 24 O C 235=64 I C 135*

Finding of opium in a Licensed Vendor s house—Keeping of Incorrect Accounts—Liability of Agent—S 9 (c) (g) —

The Sub Inspector of Tnunsa, while investigating a case, happened to search Accused Duni Chand s house and found *2* seers of opium, and on search of his shop he found 5 tolas of opium On inspecting his register, he found that *2* seers of opium were down as the balance and thus 5 tolas were found in excess He sent a ruqa to his Thana and a telegram to the Excise Sub Inspector The Accused was sent up for trial by the Police under S 9 (evidently meaning clauses c and g) The Register kept in the shop and written by others for the Accused showed a sale of *21* chataks from 1—9—19 to 8—9—19, and there was found to be an excess of 5 tolas over the sales, but the Hindi Bahi kept by the petitioner showed a sale of 16 chataks of opium in those dates The balance actually found on search tallied with the Accused s private Bahi in Hindi The Magistrate however convicted the Accused

On reference, the High Court Held ' In this case the petitioner who is the authorised agent of a retail licensee of opium, has been convicted of offences punished under S 9 of the opium Act The charges were vague and the judgment of the Magistrate is also vague but apparently the Magistrate s meaning was that the petitioner had infringed the provisions of the Act by the illegal possession of 5 tolas of opium and had also made mistakes in his register On a petition of revision to the Sessions Judge that officer has forwarded the proceedings under S 438 Cr P C pointing out that under the authority of Emp *Vs* Lalli (*42* I C 593=41 P R 1917) the petitioner being the authorised agent of the licensee is authorised to possess opium to the extent of his license The learned Judge has also pointed out that though there was a mistake in the regular register of sales, the Hindi register kept by the petitioner was correct In the opinion of the Sessions Judge, at the most the offence was a technical one, and the petitioner's action was more excusable on the ground that he himself does not understand Urdu, and was at the time ill and in mourning

As for the illegal possession of 5 tolas of opium, I agree with the Sessions Judge that the petitioner being the authorised agent of the licensee and being authorised to possess opium and the amount found not being beyond the limit of his license, the conviction cannot stand Emp *Vs* Lalli was a clear authority in point The learned Counsel for the Crown urges that the *2* seers

(*b*) the opium in respect of which any offence under the same section has been committed,

(*c*) Where, in the case of an offence under clause (*d*) or (*e*) of the same section, the offender is transporting, importing or exporting any opium exceeding the quantity (if any) which he is permitted to transport, import or export, as the case may be, the whole of the opium which he is transporting, importing or exporting,

(*d*) where, in the case of an offence under clause (*f*) of the same section, the offender has in his possession any opium other than the opium in respect of which the offence has been committed, the whole of such other opium,

shall be liable to confiscation.

The vessels, packages and coverings in which any opium liable to confiscation under this section is found and the other contents (if any) of the vessels or package in which such opium may be concealed, and the animals and conveyances used in carrying it, shall likewise be liable to confiscation

Order of Confiscation of boat—Owner of boat not heard—Whether right—S 11 —

M, hired a boat from the petitioner Abdul Rahiman at the rent of Rs 5 a month for plying in the river. M was arrested by the Customs Officers and subsequently convicted by the Magistrate under S 5 of the opium Act The Magistrate directed that the boat in which the opium was found be also confiscated

Held (1) that the order should not have been passed without giving the owner of the boat an opportunity of being heard Held further that S 11 of the Act does not contemplate that every receptacle, such as a ship or a house or a carriage in which a small quantity of opium may happen to be found is liable to confiscation, the liability arises from the owner of such conveyance using the conveyance for the purpose of transporting opium No one can be liable, because his servant made use of his private carriage as a depositary for his private stock of opium

Sheik Abdul Rahman Vs *Emp* 9 I C 587=15 C W N 296

Confiscation of Property—S 11 —

The Accused hired a cartman A bag containing opium belonging to the Accused was found in the cart The Magistrate ordered the confiscation of

the cart. Held that in the absence of evidence to show that the cartman knew or had reason to believe that opium was being transported in the Accused s bag and that he had no right to transport it, the order of confiscation of the cart was illegal

2 No appeal lies against an order of confiscation under S 11 of the opium Act

Ramanna—1 Weir 835

Confiscation—Notice before Confiscation—Power of Magistrate to impose a fine of Rs 3 000—Legality—S 11 —

Reference by the Sessions Judge of Gaya that the Magistrate had no power, (1) to confiscate the motor car without giving notice to the alleged owner of the motor car and, (2) to impose a fine of Rs 3,000 in lieu of confiscation

"I am of opinion that the learned Sessions Judge is quite right in coming to the conclusion that the order confiscating the motor car should not have been passed without giving an opportunity to the alleged owner to prove that he did not know, and had no reason to believe, that opium was transported in the motor car in question, but I did not agree with the Sessions Judge that the Magistrate had now power to impose a fine of Rs 3,000 inasmuch as under S 32 Cr P C his power to impose a fine is limited to 1,000 Rs The Magistrate in directing that the owner should have an option, in lieu of confiscation to pay Rs 3,000 acted under S 12 of Act I of 1878 That is a Special Jurisdiction conferred on the Magistrate, and is not limited in any way by the Code of Cr P C Under S 12, a Magistrate who has power to order confiscation, has also the power to give the owner of the thing liable to be confiscated, an option to pay in lieu of confiscation such a fine as the officer thinks fit

The learned Magistrate is quite right in thinking that the fine to be paid under S 12 is hardly a fine, but is merely a compensation in lieu of confiscation I however think that the Sessions Judge was right in the conclusion at which he arrived, namely, that the owner of the taxi-cab did not have adequate opportunity of showing cause against confiscation

Mr. N argues that no further steps should be taken and that the order of confiscation should be wholly set aside I cannot agree with the contention. I set aside the order of the Magistrate and direct that he should proceed according to law If the fine of 3,000 Rs imposed on the petitioner be paid, then no further action need be taken

(Pat) Manghan Das Vs Rahim Bux & oth-rs—1 P L.R 32=69 C

Order of confiscation by whom to be made

12 When the offender is convicted, or when the person charged with an offence in respect of any opium is acquitted, but the Magistrate decides that the opium is liable to confiscation, such confiscation may be ordered by the Magistrate.

Whenever confiscation is authorized by this Act, the officer ordering it may give the owner of the thing liable to be confiscated an option to pay, in lieu of confiscation, such fine as the officer thinks fit

When an offence against this Act has been committed, but the offender is not known or cannot be found, or when opium not in the possession of any person cannot be satisfactorily accounted for, the case shall be enquired into and determined by the Collector of the district or Deputy Commissioner, or by any other officer authorized by the Local Government in this behalf, either personally or in right of his office, who may order such confiscation Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing the persons (if any) claiming any right thereto, and the evidence (if any) which they produce in support of their claims

Power to make rules regarding disposal of things confiscated and rewards.

13 The Local Government may, with the previous sanction of the Governor General in Council, from time to time, by notification in the local Gazette, make[1] rules consistent with this Act to regulate—

(*a*) the disposal of all things confiscated under this Act, and

(*b*) the rewards to be paid to officers and informers out of the proceeds of fines and confiscations under this Act

Power to enter arrest and search on information that opium is unlawfully kept in any enclosed place

14 Any officer of any of the departments of Excise, Police, Customs, Salt, Opium or Revenue superior in rank to a peon or constable, who may in right of his office be authorized by the [2]Local Government in this behalf, and who has reason to

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[1] See List of rules noted under s 5 *supra* which were made also under the powers conferred by this section

[2] For notification conferring powers on officials of the class referred to in—
(1) Ajmer Merwara *see* Aj Loc R and O 1
(2) Assam, *see* Assam Manual of Loc R and O, p xxiv,

believe, from personal knowledge or from information given by any person and taken down in writing, that opium liable to confiscation under this Act is manufactured, kept or concealed in any building, vessel or enclosed place, may, between sunrise and sunset,—

(*a*) enter into any such building, vessel, or place ;

(*b*) in case of resistance, break open any door and remove any other obstacle to such entry ,

(*c*) seize such opium and all materials used in the manufacture thereof, and any other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium ; and

(*d*) detain and search, and if he think proper, arrest, any person whom he has reason to believe to be guilty of any offence relating to such opium under this or any other law for the time being in force.

Power to seize opium in open places

15 Any officer of any of the said departments may—

(*a*) seize, in any open place or in transit, any opium or other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium ;

Power to detain search and arrest

(*b*) detain and search any person whom he has reason to believe to be guilty of any offence against this or any other such law, and, if such person has opium in his possession, arrest him and any other persons in his company.

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(3) Bombay, *see* List of the Bombay Loc R and Bombay Government Gazette, 1868, Pt. I p. 23, *ibid* 1903, Pt. 974 and 2,60, *ibid* 1902, p 1561, *ibid* 1903 p 1254, and *ibid*, 1907, Pt I, p. 670.

(4) Burma, *see* Burma Gazette, 1895, Pt I, p. 280.

(5) Madras, *see* Mad Loc. R. and O.

(6) Punjab *see* Punjab Gazette, 1881 Pt I p 452.

(7) Province of Agra, *see* N W P and Oudh Gazette, 1880 Pt. I, p 148.

(8) N W Frontier Province, on officers of the Border Military Police *see* Gazette of India, 1904 Pt. II, p 85.

16 All searches under section 14 or section 15 shall be made in accordance with the provisions of the [1]Code of Criminal Procedure

Searches how made

Opium Act Illegality of search as defence—Rule 16

The Accused was found in possession of opium in excess of the quantity allowed by law He was thereupon prosecuted and convicted His plea was that the discovery of the opium was the result of an illegal search Held that the fact that the opium was discovered as the result of an illegal search cannot exonerate the Accused from criminal liability

4 Cr L J 290=118 P L R 1907

Possession of opium—Legality of arrest and conviction—S 16 —

So far as the legality of a conviction under the opium Act goes, it does not matter by whom the Accused was arrested or found in possession of opium

U B R (1897—1901)—Vol I 239

Irregularity in search—Whether sufficient to vitiate proceedings—

Ss 9 (c) (e) 14—16 —

The petitioners were convicted of offences under S 9 (c) (e) of the opium Act and sentenced to one year R I coupled with a fine of Rs 200 each The Sessions Judge affirmed the conviction but reduced the period of imprisonment to 3 M R I each, and a fine of Rs 200 on Lalu Pandit and a fine of Rs 25 on Ali Raza

In revision it was urged that the provisions of S 14 of the opium Act had not been complied with that the search contemplated by S 14 had not been duly and regularly made in accordance with the requirements of the Act inasmuch as the search that was made in this particular case was effected at hours other than between sunrise and sunset

The Revision Judge referred the case to a Divisional bench remarking "that mere illegality committed in the exercise of a right of search does not of necessity destroy the fact of criminality if a crime be proved otherwise to have been committed by a person against whom a crime is charged under the opium Act or any kindred Act If the right of search be illegally performed and executed this may constitute a civil injury for which damages may be recovered but it cannot in my opinion wholly destroy or render nugatory the act or fact of criminality if a crime be otherwise proved to have been committed

[1]See now the Code of Criminal Procedure 1898 (Act 5 of 1898) Genl Acts Vol V

Held that mere illegality in the exercise of the right of search is not in tself sufficient ground for setting aside a conviction

35 Bom 225
35 All 358
31 Cal 557
26 Mad 124 } *Followed*

Lalu Pandit Vs Emp (Pat) 53 I C 157

Entry and search of boat between sunset and sunrise without warrant—
Whether legal—Ss 14—15 and 19 —

Opium which is being carried about from place to place in a boat is no doubt "in transit" altho the boat may be temporarily anchored or otherwise fastened, so that if an officer who has entered on a boat lawfully sees opium in it, he may seize it if he has reason to believe that it is liable to confiscation, but S 15 of the Act does not authorise an officer to enter a boat without the permission of the person in charge of it In order to justify entry and search of a boat between sunset and sunrise against the will of the person in charge or without his permission an officer must obtain a warrant from another officer who must be authorised under S 19 of the Act

Emp Vs Naw Zu 2 I C 546=5 L B R 56 F B

Report of Excise Officer—Irregularity—Search of house after sunset—
No witness s—Failure to forward opium seized to the Magistrate or Police—effect of—Ss 9 (c) 14—20

On 27-10-1918, after sunset, Tirbeni, an Excise Sub Inspector happened to pass an opium shop in which the Accused served as salesman He entered the shop, checked the opium and found that the opium in the premises tallied with the account books He had some suspicion that there might be some opium in an adjoining house and in company with another Sub Inspector, Waraset Hussein, who happened to come he entered the adjoining house and then (after the entry) sent Waraset Hussein to get two search witnesses Then they all went to a particular room found 5 cakes of opium weighing 2 seers 5 chataks and arrested one of the Accused Lachmi Narayan, the other Accused Paras Singh having fon away He took Lachmi Narayan to the Police Station but conducted the investigation himself, and retained the opium found on the premises, which he produced in Court when he made his state ment He submitted a report, and a charge sheet, upon which the Deputy Magistrate took cognisance of the case, treating the report of the Excise Sub Inspector as a Police report and convicted the Accused under S 9 (c) and sentenced them to undergo 6 M R I each. On appeal, the Sessions Judge confirmed the conviction pointing out that the Magistrate was wrong in treating the Excise Sub-Inspector s report as a Police report and that he must have taken cognisance under S. 190 (1) (a) of the Cr P C

Two points were urged in revision *viz* :—(1) that the Deputy Magistrate was not properly in seizin of the case and, (2) that there were a series of irregularities which have seriously prejudiced the petitioners

Held that there was no formal complaint before the Magistrate, and even if there was, his omission to examine the complainant on oath as required by S 200 was an illegality which vitiated the proceedings The examination of the complainant on oath is not a mere formality but a condition precedent which must be complied with The filing of the petition of complaint is the act of the party, and it is incumbent on the Magistrate to show in some way that he intends to proceed with the matter, and the only way in which he can express that intention is by examining the complainant on oath

Held further that there should not have been a conviction by reason of the following irregularities which have seriously prejudiced the petitioners —

(a) In contravention of the provisions of S 14 (opium Act), the Sub Inspector entered the premises after sunset which he had no right to do.

(b) In contravention of S 103 (Cr. P C) he entered the premises without any search witnesses These are statutory safe guards for the protection of Accused persons so that it may not be in the power of Excise Officers, or, for the matter of that, in the power of Police Officers to smuggle an article into a house and bolster up a false case against the persons with whom they may be on terms of enemity When these safe guards are deliberately broken, it is not for the Accused to show that they have been prejudiced

(c) He did not forward the opium seized to the nearest Police Station either without delay or at all He did not produce the opium seized until he gave his evidence in Court Nor is this all He kept investigation in his own hand took a recognisance bond from Lachmi Narayan whom he arrested and which recognition bond contained a full confession of the guilt of Lachmi Narayan The thumb impression purporting to be the thumb impression of Lachmi Narayan in the recognition bond, in fact was not his thumb impression The conclusion is that the document has been forged by somebody and as it has been produced by Tirbeni for the purpose of securing the conviction of the petitioners, very grave suspicion must attach to the part played by Tirbeni in the matter of arrest of petitioners The conviction fails both on facts and on law Sentences set aside

Lachmi Narayan and another Vs *Emp* —(*Pat*)—*20 Cr L J 742=53 I C 150*

Search—103 Cr P C—Ss 14—15—16 —

S 16 of the opium Act requires that searches under Ss 14 and 15 shall be made in accordance with the provisions of S 103 of the Code of Criminal Procedure It would however appear from the wording of S 38 of the Excise

Act that it is not necessary for an Excise Officer to conduct the search under the provisions of S 103 of the Cr P C Where therefore searches are undertaken under the opium Act, respectable inhabitants of the locality should be called in to witness the search

4 LBR 121

Search Irregularity in—Effect of evidence—S 16 —

In all searches under the opium Act the provisions of S 103 Cr P C should be strictly observed, *viz* (1) 2 or 3 respectable inhabitants of the locality should be called in to witness the search, (2) a list of the property found should be made It must be remembered that irregularity in a search greatly impairs the value of the evidence regarding the discovery of opium

U BR Vol I 135 (1892—1896)

Officers to aid at each other

17 The officers of the several departments mentioned in section 14 shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act

Vexatious entries searches seizures and arrests.

18 Any officer of any of the said departments who, without reasonable ground of suspicion, enters or searches, or causes to be entered or searched, any building, vessel or place,

or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any opium or other thing liable to confiscation under this Act,

or vexatiously and unnecessarily detains, searches or arrests any person,

shall, for every such offence, be punished with fine not exceeding five hundred rupees.

Issue of warrants.

19 The Collector of the district, Deputy Commissioner or other[1] officer authorized by the Local Government in this behalf, either personally or in right of his office or a Magistrate, may issue his warrant for the arrest of any person whom he has reason to believe to have committed an offence relating to opium, or for the search, whether by day or night, of any building or vessel or place in which he has reason to believe opium liable to confiscation to be kept or concealed

[1] See foot note to s. 14 *supra*

All warrants issued under this section shall be executed in accordance with the provisions of the [1]Code of Criminal Procedure

Disposal of person arrested or thing seized

20. Every person arrested, and thing seized, under section 14 or section 15, shall be forwarded without delay to the officer in charge of the nearest police-station, and every person arrested and thing seized under section 19 shall be forwarded without delay to the officer by whom the warrant was issued

Every officer to whom any person or thing is forwarded under this section shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or thing

Report of arrests and seizures

21. Whenever any officer makes any arrest or seizure under this Act, he shall, within forty eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

Procedure in case of illegal poppy cultivation

22. In the case of alleged illegal cultivation of the poppy, the crop shall not be removed, but shall, pending the disposal of the case, be attached by an officer superior in rank to a peon or constable, who may in right of his office be [2]authorized by the Local Government in this behalf; and such officer shall require the cultivator to give bail in a reasonable amount (to be fixed by such officer) for his appearance before the Magistrate by whom the case is to be disposed of, and such cultivator shall not be arrested unless within a reasonable time he fails to give such bail

Provided that, wherever [3] Act No XIII of 1857 (*An Act to consolidate and amend the law relating to the cultivation of the Poppy and the manufacture of Opium in the Presidency of Fort William in Bengal*) or any part thereof, is in force, nothing in this section shall apply to such cultivation.

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[1] *See* now the Code of Criminal Procedure, 1898 (Act 5 of 1898), Genl Acts, Vol V
[2] *See* foot note to s 14, *supra*
[3] United Provinces Code, Eastern Bengal and Assam Code, Central Province Code and Bengal Code

Recovery of arrears of fees duties etc

23 Any arrear of any fee or duty imposed under this Act or any rule made hereunder,

and any arrear due from any farmer of opium revenue,

may be recovered from the person primarily liable to pay the same to the Government or from his surety (if any) as if it were an arrear of land revenue

Farmer may apply to Collector or other officer to recover amount due to him by licensee

24 When any amount is due to a farmer of opium revenue from his licensee, in respect of a license, such farmer may make an application to the Collector of the district, Deputy Commissioner or other[1] officer authorized by the Local Government in this behalf, praying such officer to recover such amount on behalf of the applicant, and on receiving such application, such Collector, Deputy Commissioner or other officer may in his discretion recover such amount as if it were an arrear of land revenue, and shall pay any amount so recovered to the applicant

Provided that the execution of any process issued by such Collector, [2][Deputy Commissioner] or other officer for the recovery of such amount shall be stayed if the licensee institutes a suit in the Civil Court to try the demand of the farmer, and furnishes security to the satisfaction of such officer for the payment of the amount which such Court may adjudge to be due from him to such farmer

Provided also that nothing contained in this section or done thereunder shall affect the right of any farmer of opium revenue to recover by suit in the Civil Court or otherwise any amount due to him from such licensee.

Recovery of penalties due under bond

25 When any person, in compliance with any rule made hereunder, gives a bond for the performance of any duty or act, such duty or act shall be deemed to be a public duty, or an act in which the public are interested, as the case may be, within the meaning of the [3]Indian Contract Act, 1872, section 74, and, upon breach of

[1] *See* foo note to s 14 *supra*.

[2] Deputy Commissioner' was substituted for 'Deputy Collector' by the Repealing and Amending Act 1891 (12 of 1891) Sch II Genl Acts, Vol IV

[3] Genl Act, Vol II

(3) The conviction of Salim Ullah could not be sustained inasmuch as the possession of opium could not be attributed to him in the sense required by Law

(4) The case against Hira Lal depended on the evidence of a person who did not make it clear that Hira Lal himself was a party to such a sale, if such a sale took place

The only fact which has been proved beyond a shadow of doubt is the possession of a seer of opium by Lalta Persad and the fact that 6 seers of opium were found in circumstances which justify the conclusion that Mussamat Laddan was in possession of it Therefore the convictions of Lachu Salim Ullah, Hira Lal and Lalta Persad were set aside Lalta Persad was directed to be retried according to law Mussamat Laddan not having applied for revision, her case was not discussed

(O) Lachu Vs Emp 15 Cr L J 156=24 I C. 156.

Punishment—

In all cases where Accused persons are convicted of offences under the opium Act under conditions which lead the convicting Magistrate to infer that the Accused are engaged in illicit traffic in opium on a large scale, or in transporting opium in large quantities, held that a substantive sentence of imprisonment should be awarded in addition to a substantial fine, because in such cases, the profits are such that a sentence of fine only will not act as a deterrent

U B R (1897—1901) Vol I 241

Punishment—

Where opium eaters and smokers are prosecuted for illicit purchase of opium for their own use, they must be leniently punished, but smugglers and dealers who carry on illicit trade actions on a large scale must be severely dealt with

Shew Kin—1 Bur 569

Punishment—

Courts must not by the imposition of ruinous fines render the administration of law unbearable Rewards must be regulated by the quantity discovered, and the amount of fine which it is reasonable to inflict

Ah Kyin—1 Bur 568

Measure of sentence—

In dealing with opium cases Courts must be guided by sound principles, and must not by the imposition of ruinous fines for trivial offences render the administration of law unbearable

L B R 567—(1872—1892)

Measure of reward —

In opium cases, rewards should not under ordinary circumstances, usually exceed Rs 5 for each ½ tola of opium found Magistrates should be careful so to limit a reward as to leave no doubt that it can be paid out of the fine and value of the opium combined

L B R. 568 (1872-1892)

Trial of offences under opium Act —

An offence under S 9 of the opium Act being punishable with one year's rigorous imprisonment cannot be tried summarily

4 Bur L T 271=13 Cr L.J 58.

Offence under S 9—Whether cognisable —

An offence under S 9 of the opium Act is a non cognisable offence and is one for which a Police Officer cannot arrest without warrant He has therefore under S 155 Cr P C no authority to investigate such an offence without the order of a Magistrate, nor can he under S 165 Cr P C. make a search in respect of it If he does so, he acts illegally, and an action for damages will lie against him for illegal search The power of arrest, referred to in S 24 of the opium Act, is a conditional power It only gives the right to a Police Officer to take security from the Accused, and the power to arrest and take him into custody arises only in case the Accused does not furnish the security that may be demanded of him

Bahabal Shah—24 Cal 691.

Offence under S 9—Whether cognisable offence —

Before leaving the case, we think it advisable to point out that the view of the appellate Magistrate expressed in paragraph 7 of his judgment is erroneous He seems to think that the case is not a case of a cognisable offence, and therefore it should have been tried as a summons case and not as a warrant case As the appellate Magistrate himself points out, under section 15 of the Opium Act, a police constable has power to detain and search and arrest any person possessing illicit opium, section 4 (f) of the Criminal Procedure Code defines "cognisable offence' as an offence for which a police officer within or without the Presidency Town, may, in accordance with the second schedule or under any law for the time being in force, arrest without warrant This is therefore clearly a cognisable case under the Criminal Procedure Code The appellate Magistrate seems to have overlooked the words "under any law for the time being in force" in the definition of a cognisable offence, otherwise he would not have fallen into the mistake he fell into

K.E Vs Baday and Ramanujam Chetti—(Mad) Cr. App 849 of 1923.

It was urged that assuming these 2 statements of the 1st and 2nd accused were confessions, they were not admissible in evidence inasmuch as they were made to people who were in reality Police officers altho not called Police officers and that under the provisions of S 25, these statements ought not to have been admitted Held that it is not possible that the Excise officers in this case could be said to be Police officers, and that the statements made by the 1st and 2nd Accused were not admissible by reason of the fact that they were made to Police officers

The 2nd point was that inasmuch as the 1st and 2nd Accused had at the trial made statements which were quite inconsistent with those which they were alleged to have made to the Excise officer, the statements should not be admitted under S 30 Held that in order that a confession should be admissible it is not necessary that it must be a confession in which the maker of it persists up to and at the time of the trial If he makes a confession before the case comes up for trial and withdraws it and does not continue to make the confession at the time of the trial still it would be admissible against the other Accused, under S 30 of the I E A as well as against the maker of the confession

For the purpose of seeing whether statements made by Accused persons are confessions or not it is essential first of all to consider the nature of the offence with which the Accused has been charged or is likely to be charged, and secondly the whole of the statements must be read for the purpose of seeing whether in the opinion of the Court they are confessions or not Where the statements are consistent with an attempt on the part of the makers to exculpate themselves from the charge, which has been or which is likely to be made against them, they ought not to be taken into consideration against the appellant under S 30

Having regard to the fact that the statements made by 1st and 2nd Accused to the Excise officers ought not to have been taken into consideration against the appellant, and having regard to the fact that the evidence of the 4th prosecution witness ought not to be relied on and having regard to the state of the evidence on the record, the conviction of the appellant is quashed

Ah Foong Chinaman Vs. Emp (C) 22 C W N 834=48 I C 504

Excise officer—Also Magistrate—Whether personally interested —

One M was convicted by the joint Magistrate of Benares under S 9 of the offence of selling opium without a license The joint Magistrate was also the officer who had been placed in charge of the opium and Excise administration of the District within which the offence was alleged to have been committed

Partnership with farmers of opium Revenue—Suit for dissolution of partnership—
Ss 4—5—9 —

The defendants were farmers of opium Revenue under Government. They entered into an agreement with the plaintiff agreeing to take him as a partner in their business both with respect to their right to vend opium in the Godavari District which they had already obtained, and with respect to any further right they might thereafter obtain in the adjoining districts The partnership existed for some years The defendants alone obtained a license from the Collector for the sale of opium and it was admitted that the Collector's sanction was not obtained for the partnership agreement Cl 26 of the conditions subject to which the license was given provided that except with the permission of the Collector the licensee shall not sell, transfer, or sub let his privilege.

In a suit for dissolution of partnership held —(1) that the combined effect of sections 4, 5 and 9 of the opium Act is to make a transfer in violation of the provisions of Cl 26 in the license illegal, and the Plaintiff could acquire no rights enforceable in law ,

(2) that the admission of Plaintiff to partnership with the defendants is a transfer of the right of sale granted to the defendants,

(3) that it is well established that the provisions of the Abkari and opium Acts are not intended merely to protect the public revenue and that the prohibitions contained therein are based on public policy

Nalan Padmanabhan Vs Sait Badrinath Saha—2 M W N 371=10 I C 126.

Conviction on statement of informer —

Where a conviction for illicit sale of opium depended on the bare statement of an hired informer of the cooly class, and there was no corroboration of his testimony, the chief court set aside that conviction

2 P R 1894.

Excise officer—Evidence Act—Confessions to Excise officers—Admissibility—
Ss 25—30 —

The appellant Ah Foong, a Chinaman was charged along with 2 others with an alleged offence under S 9 Cl (c) and (d) of the opium Act The appellant was sentenced to one year s R I , the 1st Accused to 6 M R I and the 2nd Accused was acquitted The 1st and 2nd Accused made certain statements to the Excise officers and the Magistrate relied to a great extent upon these statements and took them into consideration as against the 3rd Accused *i e*, the appellant

It was urged that assuming these 2 statements of the 1st and 2nd Accused were confessions, they were not admissible in evidence inasmuch as they were made to people who were in reality Police officers altho' not called Police officers, and that under the provisions of S 25, these statements ought not to have been admitted Held that it is not possible that the Excise officers in this case could be said to be Police officers, and that the statements made by the 1st and 2nd Accused were not admissible by reason of the fact that they were made to Police officers

The 2nd point was that inasmuch as the 1st and 2nd Accused had at the trial made statements which were quite inconsistent with those which they were alleged to have made to the Excise officer, the statements should not be admitted under S 30 Held that in order that a confession should be admissible it is not necessary that it must be a confession in which the maker of it persists up to and at the time of the trial If he makes a confession before the case comes up for trial and withdraws it and does not continue to make the confession at the time of the trial, still it would be admissible against the other Accused, under S 30 of the I E A as well as against the maker of the confession

For the purpose of seeing whether statements made by Accused persons are confessions or not it is essential first of all to consider the nature of the offence with which the Accused has been charged or is likely to be charged and secondly the whole of the statements must be read for the purpose of seeing whether in the opinion of the Court they are confessions or not Where the statements are consistent with an attempt on the part of the makers to exculpate themselves from the charge, which has been or which is likely to be made against them, they ought not to be taken into consideration against the appellant under S 30

Having regard to the fact that the statements made by 1st and 2nd Accused to the Excise officers ought not to have been taken into consideration against the appellant, and having regard to the fact that the evidence of the 4th prosecution witness ought not to be relied on, and having regard to the state of the evidence on the record, the conviction of the appellant is quashed.

Ah Foong Chinaman Vs. Emp (C) 22 C W N 834=48 I C 504

Excise officer—Also Magistrate—Whether personally interested —

One M was convicted by the joint Magistrate of Benares under S 9 of the offence of selling opium without a license The joint Magistrate was also the officer who had been placed in charge of the opium and [illegible] administration of the District within which the offence was alleged to have been committed

Held on revision that the words "personally interested" in the Cr P C cannot refer to any very remote interest in the matter and must refer to some particular and immediate personal interest in the case and its results A Magistrate is not personally interested merely by reason of its being his duty as an officer under Government to see that the law relating to the sale of opium is enforced and maintained in the part of the District of which he is in charge (The prosecution was instituted by a Sub Inspector of Police)

Q E Vs Mussamat Ganeshi—15 All 192

Arrest—Rescuing offenders from Lawful custody—Rioting—Ss 9 and 15—I P C 224 225 and 147 —

The Accused M was suspected of being in possession of opium contrary to the opium Act, and certain persons were put forward by the Excise officer as apparent purchasers, and in pursuance of such apparent purchases, certain balls of black substance changed hands Thereupon M was arrested by the Excise officer On the way, the Excise officer and the others who were with him were attacked by a body of men who were carrying Lathies and M was rescued by force

A case was then made against M under S 9 of the opium Act alleging that he was unlawfully in possession of opium He was convicted On revision, the High Court set aside the conviction on the ground that the black substance did contain a very small percentage of opium, but was not in fact opium within the meaning of the Act

M and others were then prosecuted again, M under S 224 I P C the other Accused under S 225 I P C and all of them under 147 I P C and were convicted

It was urged in their defence on revision that M not having committed any offence under S 9 of the opium Act was not in lawful custody at the time of his rescue

Held that M being himself responsible for his arrest by alleging that the substance which he was selling was opium cannot turn round and say that his arrest was illegal alleging that what he was selling was not opium, altho at the time of the sale he passed it off as opium Consequently the arrest was legal and M was in lawful custody at the time of the rescue

The words for "any such offence in S 224 I P C mean for any offence with which he is charged or of which he has been convicted, so that it would be an offence for a man to escape from custody after he had been lawfully arrested on a charge of having committed an offence altho he may not be convicted of such latter offence

Convictions of all the Accused confirmed

Mahomed Kazi and others Vs Emp (Cal) 35 I C 811

Direction 71—Purchase of opium under wrong name—Fraudulent act not dishonest Act —

The Accused who was legally entitled to purchase opium from a licensed vendor bought opium at the Kyaikto opium shop under the name of Kun Kyn The daily rates of consumption for opium consumers are fixed under direction 71 and they are not allowed to buy opium in excess of their average consumption The Accused was in the habit of buying opium in his own name at Kyaik-kaw where his recorded daily consumption was half tola, and he gave the name of Kan Kyn at Kyaikto in order to be able to buy opium there in excess not of the amount which he was legally entitled to possess but of the amount which the Excise officer thought fit to allow him

Held that by personating a real or imaginary person and thereby inducing the opium vendor at Kyaikto to deliver property to him, the Accused cannot be said to have acted dishonestly as there would have been no wrongful gain or loss had the opium been sold to him, as the Accused clearly had the intention to deceive the opium vendor in order to obtain an advantage or privilege for himself which he would not otherwise have obtained, he acted fraudulently Conviction confirmed

Emp Vs Tan Kep Si—3 Bur L T 11=8 I C 596

Burma opium Law Amendment Act VII of 1909—Procedure of Magistrate S 3 —

The terms of S 3 of the Burma Law Amendment Act are however *mutatis mutandis* identical with the terms of S 17 of the Burma Gambling Act and a Magistrate in dealing with a person against whom information is received under that section should do so as nearly as possible as if the information were of the description mentioned in S 110 of the Cr P C *i e* to say he must record an order under S 112 and proceed in accordance with the following sections of the Code and, if he finds it necessary to demand security, he must make an order under S 118 Against this order an appeal lies to the District Magistrate under S 406 of the Cr P C. Q E vs. [illegible] Maw 1 U. B R. 227 followed

Law Kaw Vs Emp 3 U.B R. 117=50 I C [illegible]

Bombay Act No. II of 1923.

An Act further to amend the Opium Act, 1878

WHEREAS it is expedient further to amend the Opium Act, 1878, in its application to the Presidency of Bombay, in manner hereinafter appearing, and WHEREAS the previous sanction of the Governor General required by clause (*c*) of sub section (3) of section 80A of the Government of India Act has been obtained for the passing of this Act It is hereby enacted as follows —

Short title

1. This Act may be called the Opium (Amendment) Act, 1923.

Interpretation clause

2 In section 3 of the Opium Act, 1878, hereinafter called the said Act, after the definition of "Magistrate" the following definition shall be inserted, namely —

"Officer in charge of a police station" means and includes, in the City of Bombay, an officer in charge of a section, and "officer in charge of the nearest police station" means and includes, in the City of Bombay, the nearest officer in charge of a section, within the meaning of the City of Bombay Police Act, 1902.

New sections 20 to 20 C

3 For section 20 of the said Act, the following sections shall be substituted, namely —

Powers of certain officers of Salt and Excise and Customs Departments with regard to offences

"20 Every officer of the Department of Salt and Excise not below the rank of Inspector and every officer of the Customs Department not below the rank of Preventive officer, who may in right of his office be authorised by the Local Government in this behalf, shall, within the area for which he is appointed, exercise powers with regard to offences under this Act, similar to those exercised by an officer in charge of a police station under the Code of Criminal Procedure, 1898

Disposal of persons arrested and things seized in certain cases.

20A Every person arrested and thing seized under section 14, 15 or 19 shall, unless the arrest or seizure has been made by an officer of the Department of Salt and Excise or the Customs Department authorised under section 20, be forwarded without delay to the

nearest such officer, or if there be no such officer within a reasonable distance, to the officer in charge of the nearest police station

Disposal of person arrested by Officer of Department mentioned in Section 20

20B When any person has been arrested under section 14, 15 or 19 by an officer of the Department of Salt and Excise or the Customs Department authorised under section 20 or been forwarded to him under section 20A, the said officer may detain such person and shall proceed to enquire into the charge against him, and

(*a*) if he is of opinion that there is sufficient evidence or reasonable ground of suspicion against him, he shall forward him to the nearest Magistrate having power to take cognizance of the offence, or admit him to bail if sufficient bail be tendered for his appearance before the Magistrate ; or

(*b*) if he is of opinion that there is not sufficient evidence or reasonable ground as aforesaid, or that the person arrested may be discharged with a warning, he shall release him on his executing a bond with or without sureties, to appear, if and when so required, before a Magistrate having power as aforesaid, and make a full report of all the particulars of the case to his official superior and be guided by the order which he shall receive upon such report

Article seized by such Officer

20C When anything has been seized by an officer of the Department of Salt and Excise or the Customs Department authorised under section 20, or been sent to him under section 20A, such officer, after such enquiry as may be necessary, shall

(*a*) if it appears that such thing is required as evidence in the case of any person arrested, forward it to the Magistrate to whom such person is forwarded or for his appearance before whom bail has been taken,

(*b*) if it appears that it is liable to confiscation but is not required as evidence as aforesaid, send it with a full report of the particulars of the seizure to the Collector,

(*c*) if no offence appears to have been committed, return it to the person from whose possession it was seized "

—.o.—

THE MADRAS ABKARI ACT.

MADRAS ACT No. I OF 1886.

THE MADRAS ABKARI ACT, 1886.

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The Madras Abkari Act

MADRAS ACT No 1 OF 1886

(As modified up to 1st July 1914)

PASSED BY THE GOVERNOR OF FORT ST GEORGE IN COUNCIL

[*Received the assent of the Governor on the 11th January, and of the Governor-General on the 2nd February* 1886]

An Act to consolidate and amend the Abkari Law of the Presidency of Madras

WHEREAS it is expedient to consolidate and amend the law relating to the import export transport, manufacture, sale, and possession of intoxicating liquor and of intoxicating drugs in the Presidency of Madras , It is enacted as follows —

CHAPTER I

PRELIMINARY AND DEFINITIONS

Short title

1 This Act may be cited as " The Madras Abkari Act, 1886 "

Extent

It extends to the whole of the Presidency of Madras ,

Commencement

And it shall come into force in any local area within the said Presidency to such extent and from such date as the Governor in Council by notification shall direct

Repeal of enactments.

2 From the date on which this Act comes into force in any local area, the enactments mentioned in the schedule hereto annexed shall be repealed to the extent specified in the third column of the said schedule

Provided that all licenses granted under any of the said enactments in force on the date on which this Act comes into force in any local area shall continue in force for the periods for which the same have been respectively granted, subject to the provisions of the enactments under which such licenses were granted :

Provided further that the said repeal shall not affect any act done, or any offence committed, or any proceedings commenced, or any claim which has arisen, or any penalty which has been incurred, before this Act comes into force

Interpretation

3 In this Act, unless there be something repugnant in the subject or context—

Abkari revenue

(1) "Abkari revenue" means revenue derived or derivable from any duty, fee, tax, fine or confiscation imposed or ordered under the provisions of this Act, or of any other law for the time being in force relating to liquor or intoxicating drugs

Abkari officer

(2) "Abkari officer" means the Commissioner, a Collector, or any officer or other person lawfully appointed or invested with powers under sections 4 or 5 and includes the Board of Revenue when exercising any of its functions or powers in respect of abkari revenue

Commissioner

(3) "Commissioner" means the officer appointed by Government under section 4, clause (*a*)

Collector

(4) "Collector" means a Collector of land revenue, or any person appointed under section 4, clause (*b*), to exercise all the powers or to perform all the duties of a Collector under this Act

Abkari Inspector

(5) "Abkari inspector" means an officer appointed under section 4, clause (*f*)

Imprisonment

(6) "Imprisonment" means imprisonment of either description as defined in the Indian Penal Code XLV of 1860

Toddy

(7) "Toddy" means fermented or unfermented juice drawn from a cocoanut, palmyra, date, or any other kind of palm tree

Spirits.

(8) "Spirits" means any liquor containing alcohol and obtained by distillation [whether it is denatured or not][1]

[1] These words and the explanation were inserted by sect 0 1 3 of Madras Act No I of 19 3

Explanation —'Denatured' means effectually and permanently rendered unfit for human consumption

(9) "Liquor" includes spirits of wine, methylated spirits, spirits, wine, toddy, beer and all liquid consisting of or containing alcohol

Liquor '

(10) "Beer" includes ale, stout, porter and all other fermented liquors usually made from malt

Beer

(11) "Country liquor" means liquor manufactured in British India on which duty of excise has not been levied or is not leviable under this Act at the full rates of duty chargeable on liquor imported into British India from foreign countries by sea

Country liquor

(12) "Foreign liquor" includes all liquor other than country liquor

Foreign liquor

Provided that in any case in which doubt may arise the Governor in Council may declare by notification what for the purposes of this Act shall be deemed to be "country liquor" and what "foreign liquor"

(13) "Intoxicating drug" includes ganja, bhang and every preparation and admixture of the same, and every intoxicating drink or substance prepared from any part of the hemp plant (*Cannabis sativa* or *Indica*) [or the coca plant (*Erythroxylon coca*)][1] from grain or from other material and not included in the term 'liquor," but does not include opium or anything included within the meaning of that word as defined in the Indian Opium Act, 1878 (I of 1878).

Intoxicating drug

(14) "Sale" or "selling" includes any transfer otherwise than by way of gift

Sale or Selling

(15) "Import" means to bring into the Madras Presidency from sea, or from foreign territory or from any other part of British India

' Import

[1] These words were inserted by section 3 of Madras Act No I of 1913.

(16) "Export" means to take out of the Madras Presidency to sea, or to foreign territory or to any other part of British India

[1] Export

(17) "Transport" means to move from one place to another within the Madras Presidency.

[1] Transport

([1]17-*A*) "Cultivation" includes the tending or protecting of a plant during growth and does not necessarily imply raising it from seed.

Cultivation

(18) "Manufacture" includes every process, whether natural or artificial, by which any fermented, spirituous, or intoxicating liquor or intoxicating drug is produced, prepared or blended,[2] and also re distillation and every process for the rectification of liquor.

[1] Manufacture

([3]18-*A*) "Bottle" means to transfer liquor from a cask or other vessel to a bottle, jar, flask or similar receptacle for the purpose of sale whether any process of manufacture be employed or not and includes rebottling

Bottle

(19) "Rectification" includes every process whereby spirits are purified or are coloured or flavoured by mixing any material therewith

[1] Rectification

(20) "Place" includes also a house, building, shop, tent and vessel

[1] Place

[4](21) "Police station" includes any place which the Governor in Council may, by notification, declare to be a police station for the purposes of this Act.

Police station

Manufacture—What amounts to—S 3 —

Sweet palm juice which by exposure to the operation of natural causes, ferments and becomes toddy, is as much manufactured by the person who exposes it, as if the same result was produced by the process of distillation The section does not say that the particular liquor must have been manufactured, but that it must be an article into the manufacture of which either fermentation or distillation enters

5 M H C.—App 26

[1] This sub section was inserted by section 3 of Madras Act No 1 of 1913

[2] The words *prepared or blended* were substituted for the words 'or prepared' by section 3 of Madras Act No 1 of 1913

[3] This sub-section was inserted by section 3 of Madras Act No 1 of 1913

Toddy—What is—S 3 —

Toddy *prima facie* is fermented palm juice Therefore a person selling toddy without license is guilty of an offence altho' the Magistrate had not taken any evidence as to whether fermentation had taken place

5 Mad H C R App 36

CHAPTER II

ESTABLISHMENT AND CONTROL

4 Notwithstanding anything contained in Regulations I and II of 1803,[1] the Governor in Council may, from time to time, by notification applicable to any district or local area in which this Act is in force,

The Governor in Council—may appoint an officer to control the administration of the Abkari department,

(*a*) appoint an officer, who shall exercise all the powers of a Collector in respect of the abkari revenue and who shall, either as a member of the Board of Revenue or subject to the orders of the Board of Revenue or independently of the Board of Revenue, as the Governor in Council may direct, have the control of the administration of the Abkari department or of the collection of the abkari revenue or of both, and may direct that the control exercised by the Board of Revenue over Collectors in respect of the abkari revenue shall be exercised by such officer,

may appoint special Collectors of Abkari revenue,

(*b*) appoint any person other than the Collector of land revenue to exercise all or any of the powers and to perform all or any of the duties of a Collector in respect of the abkari revenue, either concurrently with or in exclusion of the Collector of land revenue, subject to such control as the Governor in Council may from time to time direct;

may withdraw Abkari powers from Board of Revenue or Collectors of land revenue,

(*c*) withdraw from the Board of Revenue or the Collector of land revenue any or all of their or his powers in respect of the abkari revenue;

may appoint officers to take action under sections 40 to 53,

(*d*) appoint officers to perform the acts and duties mentioned in sections 40 to 53 inclusive of this Act;

[1] These regulations are the Madras Board of Revenue Regulation, 1803, and the Madras Collectors Regulation, 1803 *See* now the Repealing and Amending Act, 1901 (XI of 1901).

(*e*) appoint subordinate officers of such classes and with such designations, powers, and duties under this Act as the Governor in Council may think fit;

and subordinate officers.

(*f*) order that all or any of the powers and duties assigned to any officers under clauses (*d*) and (*e*) of this section shall be exercised and performed by any Government officer or any person;

may appoint any Government officer or other person to act as above.

(*g*) delegate to any Abkari officer all or any of his powers under this Act.

and may delegate any of his powers to an Abkari officer

Rules for the guidance of Abkari officers.

5. The Governor in Council may from time to time make rules—

(1) prescribing the powers and duties under this Act to be exercised and performed by Abkari officers of the several classes; and

(2) regulating the delegation by the Board of Revenue, by the Commissioner, or by Collectors of any powers conferred by this Act or exercised in respect of abkari revenue under any Act for the time being in force

Power of Local Government to authorise officers to admit persons arrested to bail.

[1]5-A The Governor in Council may, by notification, and subject to such conditions as may be prescribed in such notification, empower all or any of the officers or classes of officers or persons mentioned in section 34, either by name or in virtue of their office, throughout the Presidency or in any local area, to admit a person arrested under that section to bail to appear, when summoned or otherwise directed before an Abkari officer having jurisdiction to inquire into the offence for which such person has been arrested, and may cancel or vary such notification.

CHAPTER III.

IMPORT, EXPORT AND TRANSPORT.

Import of liquor or intoxicating drug

6 No liquor or intoxicating drug shall be imported unless, being liable to the payment of duty under the Indian Tariff Act, 1882,[2] or any other law for

[1]This section was added by section 2 of Madras Act No. I of 1905

[2]Repealed by Act No VIII of 1894

the time being in force relating to the duties of customs on goods imported into British India, it has been dealt with according to such law.

Provided that subject to the orders of the Governor in Council the Collector may, from time to time, permit the import of liquor or intoxicating drugs, or of any kind of liquor or intoxicating drugs, other than liquor or intoxicating drugs liable to the payment of duty under such law as aforesaid, on payment of the duty, if any, to which the same is liable under this Act and on such other terms as he thinks fit, and may cancel such permission

Export of liquor or intoxicating drug

7. No liquor or intoxicating drug shall be exported unless it has been lawfully imported by sea into any port in the said Presidency, and its export is permitted by competent authority on payment of the fee or duty, if any, to which it is liable under any law for the time being in force on its transhipment or re-exportation

Provided that subject to the orders of the Governor in Council the Collector may, from time to time, permit the export of liquor or intoxicating drugs, or of any kind of liquor or intoxicating drugs, on payment of the duty, if any, to which the same is liable under this Act and on such other terms as he thinks fit, and may cancel such permission.

Sections 6 and 7 not to affect certain laws and powers of Governor General in Council.

8 Nothing in the last two preceding sections shall be deemed to affect any law for the time being in force which empowers the Governor General in Council to prohibit or restrict the importation of liquor or of intoxicating drugs or which empowers the Governor-General in Council to exempt any liquor or intoxicating drug from the whole or any part of the duties of customs to which it is liable under any law for the time being in force.

Prohibition of the transport of liquor

9 The Governor in Council may, from time to time by notification, prohibit the transport of liquor or of intoxicating drugs, or of any kind of liquor or intoxicating drugs, from any local area into any other local area.

Transport of liquor or intoxicating drug

10. No liquor or intoxicating drug exceeding such quantity as the Governor in Council may from time to time prescribe by notification, either generally for the whole Presidency or for any local area, shall be transported except under a permit issued under the provisions of the next following section.

Provided that in the case of foreign liquor transported for *bona fide* private consumption or for sale at any place at which the sale of such liquor is duly licensed or permitted under the provisions of this Act such permits shall be dispensed with unless the Governor in Council shall by notification otherwise direct with respect to any local area.

Permits for transport.

11. Permits for the transport of liquor or intoxicating drugs may be issued by the Collector or by any person duly empowered in that behalf.

Such permits shall be either general for definite periods and kinds of liquor or intoxicating drugs or special for specified occasions and particular consignments only.

Every permit shall specify—

(*a*) the name of the person authorized to transport liquor or intoxicating drugs ;

(*b*) the period for which the permit is to be in force ;

(*c*) the quantity and description of liquor or intoxicating drugs for which it is granted ;

(*d*) any other particulars which the Governor in Council may prescribe.

General permits shall be granted only to persons licensed under this Act and shall cover any quantity of liquor transported at any one time within the quantity specified in the permit.

Permits shall extend to and include servants and other persons employed by the grantees and acting on their behalf.

CHAPTER IV.

MANUFACTURE, POSSESSION AND SALE.

Manufacture of liquor or intoxicating drug prohibited except under the provisions of this Act

12 No liquor or intoxicating drug shall be manufactured, no hemp plant (*Cannabis Sativa* or *Indica*) [or coca plant (*Erythroxylon Coca*)][1] shall be cultivated;

[1][no portion of the hemp or coca plant from which any intoxicating drug can be manufactured shall be collected][1],

no toddy-producing tree shall be tapped,

no toddy shall be drawn from any tree,

no distillery or brewery shall be constructed or worked;

[1][no liquor shall be bottled for sale], and

no person shall use, keep, or have in his possession any materials, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing any liquor other than toddy or any intoxicating drug,

except under the authority and subject to the terms and conditions of a license granted by the Collector in that behalf, or under the provisions of section 21

Provided that the Governor in Council may by notification direct that in any local area it shall not be necessary to take out a license for the manufacture of liquor for *bona fide* home consumption

[1][Licenses granted under this section shall extend to and cover servants and other persons employed by the licensees and acting on their behalf]

Possession of liquor or intoxicating drugs in excess of the quantity prescribed by Government prohibited.

13 No person not being a licensed manufacturer or vendor of liquor or intoxicating drugs shall have in his possession any quantity of liquor or intoxicating drugs in excess of such quantities as the Governor in Council may from time to time prescribe by notification, either generally [or specially

[1]These words were inserted by sections 4 of the Madras Act No 1 of 1913.

regard to persons, places or time][1] in respect of any specified description or kind of liquor or intoxicating drug, unless under a license granted by the Collector in that behalf.

Provided that—

No fee to be charged for license for possession for private consumption

(1) No fee shall be charged for any such license granted for the possession of such liquor or intoxicating drugs for *bona fide* private consumption or use.

Proviso as regards foreign liquor

(2) Nothing in this section extends to any foreign liquor [other than denatured spirit][2] in the possession of any warehouseman as such, or [of] any person for his *bona fide* private consumption and not for sale.

[3]13-A. The Governor in Council may by notification prohibit the possession by any person or class of persons either throughout the whole Presidency or in any local area of any liquor or intoxicating drug either absolutely or subject to such conditions as he may prescribe.

Establishment of public distilleries and of warehouses

14. The Commissioner may with the previous sanction of the Governor in Council—

(*a*) establish a public distillery in which liquor or any kind of liquor may be manufactured under a license granted under section 12 on such conditions as the Governor in Council deems fit to impose ;

(*b*) discontinue any public distillery so established ;

(*c*) license at or in connection with any licensed distillery or elsewhere a private warehouse wherein liquor and intoxicating drugs may be deposited and kept without payment of duty ,

(*d*) establish a public warehouse wherein liquor and intoxicating drugs may be deposited and kept without payment of duty, and

[1]These words were substituted for the words "for the whole Presidency or for any local area" by section 5 of Madras Act No I of 1913

[2]These words were inserted by section 5 of Madras Act No I of 1913

[3]This word was substituted for the words "purchased by" by section 5 of Madras Act No I of 1913

[4]This section was inserted by section 6 of Madras Act No I of 1913

(*e*) discontinue any public warehouse so established

Public warehouses shall be for the general accommodation of persons desiring to warehouse liquor or intoxicating drugs subject to duty pending removal for local consumption or for export

Sale of liquor or intoxicating drug without license prohibited. Power to exempt toddy

13 No liquor or intoxicating drug shall be sold without a license from the Collector, provided that a person having the right to the toddy drawn from any tree may sell the same without a license to a person licensed to manufacture or sell toddy under this Act, and a cultivator or owner of any plant from which an intoxicating drug is produced may sell without a license those portions of the plant from which the intoxicating drug is manufactured or produced to any person licensed under this Act to sell, manufacture or export intoxicating drugs [or to any officer whom the Commissioner may generally or specially authorize][1]

[2] [Provided that a license for sale in more than one district may be granted by the Commissioner

Provided also that on such conditions as may be determined by the Commissioner a licence for sale granted under the excise law in force in another province may be deemed to be a license granted under this Act]

Provided further that the Governor in Council may [by notification][3] declare that any or all of the provisions of this Act shall not apply in any local area to trees tapped, or to toddy drawn [under such conditions as the Commissioner may prescribe][4]

[5][Nothing in this section applies to the sale of any foreign liquor legally procured by any person for his private use and sold by

[1] These words were inserted by section 7 of Madras Act No I of 1913.

[2] These provisos were substituted for the first proviso by section 7 of Madras Act No I of 1913

[3] These words were substituted for the words ' in the manner ' by section 7 of Madras Act No. I of 1913

[4] These words were substituted for the words in pots or other receptacles freshly coated internally with lime for the purpose of the manufacture of jaggery ' by section 7 of Madras Act No I of 1913

[5] This was added by section 7 of Madras Act No I of 1913.

him or by auction on his behalf or on behalf of his representatives in interest upon his quitting a station or after his decease]

Contract between licensee of toddy shops and another Sale of toddy by partner without license—S. 15 —

The Plaintiff and Defendant entered into an agreement that Defendant alone should take license for the toddy shop, that P and D should each pay his share of the initial deposit and the tree tax accruing due from time to time, and that each should sell the toddy in equal shares and take the profit resulting from such shares P filed a suit against D for damages sustained by D having obstructed him from selling toddy

Held that as P was in possession of toddy and sold it without license, it was illegal under S 15 of the Madras Abkari Act, and P s claim was not maintainable P did not set up a partnership but an agreement which would enable him to sell liquor on his own account in contravention of S 15 Petition dismissed

Medi Setti Pentayya Vs Pilli Venkata Reddi—(Madras) 14 IC 148

Exclusive privileges of manufacture etc may be granted.

16 It shall be lawful for the Governor in Council to grant to any person or persons on such conditions and for such period as may seem fit the exclusive or other privilege—

(1) of manufacturing or supplying by wholesale, or
(2) of selling by retail, or
(3) of manufacturing or supplying by wholesale and selling by retail,

any country liquor or intoxicating drugs within any local area

No grantee of any privilege under this section shall exercise the same until he has received a license in that behalf from the Collector

In such cases, if the Governor in Council shall by notification so direct, the provisions of section 12 relating to toddy and toddy-producing trees shall not apply

CHAPTER V.

DUTIES

Duty on liquor or intoxicating drugs

[1]17 [A duty of such amount as the Governor in Council may prescribe shall, if he so direct, be levied on all liquor and intoxicating drugs—

[1] This section was substituted for the original section 17 by section 8 of Madras Act No 1 of 1913

(*a*) permitted to be imported under the proviso to section 6; or

(*b*) permitted to be exported under the proviso to section 7; or

(*c*) permitted uuder section 11 to be transported; or

(*d*) manufactured under any license granted under section 12; or

(*e*) manufactured at any distillery established under section 14; or

(*f*) issued from a distillery or warehouse licensed or established under section 12 or section 14; or

(*g*) sold in any part of the said Presidency.

Provided that the duty on denatured spirit or beer manufactured in India shall, unless the Governor in Council with the previous sanction of the Governor-General in Council otherwise directs, be equal to the duty to which denatured spirit or beer respectively imported into British India by sea is liable under the Indian Tariff Act, 1894, or any other law for the time being in force relating to the duties of customs on goods imported into British India.]

How duty may be imposed.

18. Such duty may be levied in one or more of the following ways—

(*a*) by duty of excise to be charged in the case of spirits or beer either on the quantity produced in or passed out of [a distillery, brewery or warehouse licensed or established under section 12 or section 14]' as the case may be; or in accordance with such scale of equivalents, calculated on the quantity of materials used or by the degree of attenuation of the wash or wort, as the case may be, as the Governor in Council may prescribe;

(*b*) in the case of intoxicating drugs by a duty to be rateably charged on the quantity produced or manufactured [or issued from a warehouse licensed or established under section 14]'

[1] These words were substituted for the words "the distillery or brewery" by section 9 of Madras Act No 1 of 1913

[2] These words were added by section 9 of Madras Act No. I of 1913

him or by auction on his behalf or on behalf of his representatives in interest upon his quitting a station or after his decease.]

Contract between licensee of toddy shops and another. Sale of toddy by partner without license—S. 15 :—

The Plaintiff and Defendant entered into an agreement that Defendant alone should take license for the toddy shop, that P and D should each pay his share of the initial deposit and the tree tax accruing due from time to time, and that each should sell the toddy in equal shares and take the profit resulting from such shares. P filed a suit against D for damages sustained by D having obstructed him from selling toddy.

Held that as P was in possession of toddy and sold it without license, it was illegal under S. 15 of the Madras Abkari Act, and P's claim was not maintainable. P did not set up a partnership, but an agreement which would enable him to sell liquor on his own account in contravention of S. 15. Petition dismissed.

Medi Setti Pentayya Vs. Pilli Venkata Reddi—(Madras) 14 I.C. 148.

Exclusive privileges of manufacture, etc., may be granted.

16. It shall be lawful for the Governor in Council to grant to any person or persons on such conditions and for such period as may seem fit the exclusive or other privilege—

(1) of manufacturing or supplying by wholesale, or
(2) of selling by retail, or
(3) of manufacturing or supplying by wholesale and selling by retail,

any country liquor or intoxicating drugs within any local area.

No grantee of any privilege under this section shall exercise the same until he has received a license in that behalf from the Collector.

In such cases, if the Governor in Council shall by notification so direct, the provisions of section 12 relating to toddy and toddy-producing trees shall not apply.

CHAPTER V.

DUTIES.

Duty on liquor or intoxicating drugs.

[1]**17.** [A duty of such amount as the Governor in Council may prescribe shall, if he so direct, be levied on all liquor and intoxicating drugs—

[1] This section was substituted for the original section 17 by section 8 of Madras Act No. I of 1913.

(*a*) permitted to be imported under the proviso to section 6; or

(*b*) permitted to be exported under the proviso to section 7; or

(*c*) permitted under section 11 to be transported; or

(*d*) manufactured under any license granted under section 12; or

(*e*) manufactured at any distillery established under section 14; or

(*f*) issued from a distillery or warehouse licensed or established under section 12 or section 14, or

(*g*) sold in any part of the said Presidency.

Provided that the duty on denatured spirit or beer manufactured in India shall, unless the Governor in Council with the previous sanction of the Governor-General in Council otherwise directs, be equal to the duty to which denatured spirit or beer respectively imported into British India by sea is liable under the Indian Tariff Act, 1894, or any other law for the time being in force relating to the duties of customs on goods imported into British India.]

How duty may be imposed.

18 Such duty may be levied in one or more of the following ways—

(*a*) by duty of excise to be charged in the case of spirits or beer either on the quantity produced in or passed out of [a distillery, brewery or warehouse licensed or established under section 12 or section 14][1] as the case may be, or in accordance with such scale of equivalents, calculated on the quantity of materials used or by the degree of attenuation of the wash or wort, as the case may be, as the Governor in Council may prescribe,

(*b*) in the case of intoxicating drugs by a duty to be rateably charged on the quantity produced or manufactured [or issued from a warehouse licensed or established under section 14][2]

[1] These words were substituted for the words "the distillery or brewery" by section 2 of Madras Act No 1 of 1913

[2] These words were added by section 9 of Madras Act No 1 of 1913

(*c*) by payment of a sum in consideration of the grant of any exclusive or other privilege—

1 of manufacturing or supplying by wholesale, or

2 of selling by retail, or

3 of manufacturing or supplying by wholesale and selling by retail any country liquor or intoxicating drug in any local area and for any specified period of time,

(*d*) by fees on licenses for manufacture or sale,

(*e*) in the case of toddy, or spirits manufactured from toddy, by a tax on each tree from which toddy is drawn, to be paid in such instalments and for such period as the Governor in Council may direct, or

(*f*) by [import, export or][1] transport duties assessed in such manner as the Governor in Council may direct.

[2][Provided that where there is a difference of duty as between two license periods, such difference may be collected in respect of all stocks of country liquor or intoxicating drugs held by licensees at the close of the former period]

Tax for tapping unlicensed trees, from whom leviable.

19 When duty is levied by way of tax on toddy trees under section 18, the Governor in Council may by notification direct that the license required under section 12 shall be granted only on the production by the person applying for it of the written consent of the owner, or person in possession, of such trees to the license being granted to such person so applying for it, and when such notification has been issued such tax shall, in default of payment by the licensee, be recoverable from the owner or other person in possession who has so consented

When, in like case, trees are tapped without license, the tax due shall be recoverable primarily from the tapper or in default by him from the occupier, if any, of the land, or if the trees do not

[1] These words were added by section 9 of Madras Act No I of 1913

[2] This proviso was inserted by section 9 of Madras Act No I of 1913

belong to the occupier of the land, or if the land is not occupied, from the person, if any, who owns or is in possession of the trees unless he proves that the trees were tapped without his consent

Duties may be farmed

20 All or any of the duties leviable under this Act in any local area may, with the sanction of the Governor in Council, be farmed, subject to such payment and on such other conditions as the Governor in Council shall prescribe Farmers of duties under this section shall take out licenses as such from the Collector

Toddy farmer may grant license

21 When the exclusive privilege of manufacturing toddy has been granted under section 16, the Governor in Council may declare that the written permission of the grantee to draw toddy shall have, within the area to which the privilege extends, the same force and effect as a license from the Collector for that purpose under section 12

Farmer may let or assign

22 In the absence of any contract or condition to the contrary, any grantee of any exclusive or other privilege may let or assign the whole or any portion of his privilege or farm But no such lessee or assignee shall exercise any rights as such unless and until the grantee or farmer, as the case may be, shall have applied to the Collector for a license to be given to such lessee or assignee, and such lessee or assignee shall have received the same

Abkari whether includes opium—Agreement sub letting right to vend ganja—Whether legal—S 22 —

The term "Abkari does not include opium but it includes all other intoxicating drinks and substances including ganja The general conditions of an Abkari license apply to ganja also altho they do not specifically refer to the latter

Where one of the conditions of the license prohibits vending transferring or sub letting of the license an agreement sub letting the right to vend ganja is illegal and cannot be enforced

Namaiccoya Kurukal Vs Subramanya Ayyan—(Mad) 34 I C 927

Licensee assigning rights to another—Whether void—S 22—

P obtained a license to sell toddy He appointed D to manage the toddy shop on his behalf and assigned those rights to him P brought a suit to recover

from D sums due to his account of the dealings It was objected that the assignment was void and will not give rise to any right of suit The lower Court dismissed the suit Held, on appeal, that the privileges enjoyed by P are limited by the terms of the license issued to him, and where one of the clauses prohibits the assignments of those privileges without the previous consent of the Collector, no other person except the licensee can carry on the business Once the license is issued, it will be presumed that its terms were inserted with the approval of the Governor in Council

The Statutory provisions of S 22 of the Act also forbid the exercise by an assignee of any rights without receipt of a license in his own name

N Krishnayya Vs P Bhadrayya—(M) 25 I C 42

Recovery by farmer of rents due to him

23 It shall be lawful for any such grantee, farmer, lessee or assignee as aforesaid to proceed against any person holding under him for the recovery of any money due to him as if it were an arrear of rent recoverable under the law for the time being in force with regard to land holder and tenant

Provided that nothing contained in this section shall affect the right of any such grantee, farmer, lessee or assignee, to recover by civil suit any such amount due to him from any such person as aforesaid

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CHAPTER VI.

LICENSES, ETC

Form and conditions of licenses etc

24 Every license or permit granted under this Act shall be granted—

(*a*) on payment of such fees, if any ,

(*b*) for such period ,

(*c*) subject to such restrictions and on such conditions , and

(*d*) shall be in such form and contain such particulars as the Governor in Council may direct either generally, or in any particular instance in this behalf

25. Every person taking out a license under this Act may be required to execute a counterpart agreement in conformity with the tenor of his license, and to give such security for the performance of his agreement as the Collector may require.

Counterpart agreement to be executed by licensees.

26. The Collector may cancel or suspend any license or permit granted under this Act,

Power to recall licenses.

(*a*) if any fee or duty payable by the holder thereof be not duly paid ; or

(*b*) in the event of any breach by the holder of such license or permit, or by his servants, or by any one acting with his express or implied permission on his behalf, of any of the terms or conditions of such license or permit ; or

(*c*) if the holder thereof is convicted of any offence against this Act or any other law for the time being in force relating to abkari revenue, or of any cognizable and non-bailable offence [or of any offence under the Merchandise Marks Act, 1889, or under sections 478 to 489 of the Indian Penal Code or is punished for any offence referred to in the eighth item of the schedule in section 167 of the Sea Customs Act, 1878][1] ; or

IV of 1889 XLV of 1860, VIII of 1878

(*d*) where a license or permit has been granted on the application of the holder of an exclusive or other privilege or of a farmer of duties under this Act, on the requisition in writing of such person ; or

(*e*) if the conditions of the license or permit provide for such cancelment or suspension at will.

CHAPTER VII.

GENERAL PROVISIONS.

[2][27. Every person who manufactures or sells any liquor or intoxicating drugs under a license granted under this Act shall be bound—

Certain licensees required to keep instruments for testing etc

[1] These words and figures were inserted by section 10 of Madras Act No. I of 1913.

[2] This section was substituted for the original section 27 by section 11 of Madras Act No I of 1913.

(*a*) to supply himself with such measures, weights and instruments as the Governor in Council may prescribe and to keep the same in good condition ; and

(*b*) on the requisition of any Abkari officer duly empowered in that behalf at any time to measure, or weigh any liquor or intoxicating drug or to test any liquor in his possession in such manner as the said Abkari officer may require]

Recovery of duties etc

28. All duties, taxes, fines and fees payable to Government direct under any of the foregoing provisions of this Act or of any license or permit issued under it, and all amounts due to Government by any grantee of a privilege or by any farmer under this Act or by any person on account of any contract relating to the abkari revenue may be recovered from the person primarily liable to pay the same, or from his surety (if any), as if they were arrears of land revenue, and in case of default made by a grantee of a privilege or by a farmer, the Collector may take the grant or farm under management at the risk of the defaulter or may declare the grant or farm forfeited and resell it at the risk and loss of the defaulter When a grant or farm is under management under this section, the Collector may recover any monies due to the defaulter by any lessee or assignee as if they were arrears of land revenue.

Power to frame rules

29. [(1) The Governor in Council may make rules for the purpose of carrying out the provisions of this Act

(2) In particular and without prejudice to the generality of the foregoing provision the Governor in Council may make rules][1].

(*a*) regulating the mode in which toddy may be supplied to licensed vendors of the same, or to persons who distil spirits from it, or who use it in the manufacture of bread ;

(*b*) for determining the number of licenses of each description to be granted in any district or place ,

[1] This was substituted for the words The Governor in Council may from time to time make rules and for the original clause (&) by section 12 of the Madras Act No I of 1913

(*c*) for regulating the number, size and description of stills, utensils, implements and apparatus to be used in any distillery ;

(*d*) prescribing the instruments to be used in the testing of liquor and the tables of corrections according to temparature to be used therewith ;

(*e*) prescribing the measures to be used for the sale of liquor [1] ;

(*f*) fixing for any local area the minimum price below which any country liquor shall not be sold ;

(*g*) for the warehousing of liquor and intoxicating drugs and for the removal of the same from any warehouse in which they are deposited for deposit in any other warehouse or for local consumption or for export ;

(*h*) for the inspection and supervision of stills, distilleries, private warehouses and breweries ;

(*i*) for the management of any public distillery or public warehouse established under section 14 ;

(*j*) for placing the preparation of intoxicating drugs and the storage, import, export, possession or transport of liquor or intoxicating drugs under such supervision and control as may be deemed necessary for the purposes of this Act ;

(*k*) prohibiting the use of any article which the Government shall deem to be noxious or otherwise objectionable in the manufacture of liquor or of any intoxicating drug ;

(*l*) regulating the cultivation of the hemp and coca plants, the collection of those portions of such plants from which intoxicating drugs can be manufactured and the manufacture of such drugs therefrom ;

(*m*) (1) declaring the process by which spirit manufactured in or imported into the Presidency shall be denatured ;

(2) for causing such spirit to be denatured through the agency or under the supervision of the excise officers ;

[1] The word "country" in this clause was omitted by section 12 of Madras Act No. I of 1913.

a warrant, the persons obstructing and resisting could not set up the illegality of the officers proceeding as a justification of their obstruction, as it was not shown that that officer was acting otherwise than in good faith and without malice

Followed —21 M 296 *Q E Vs Pulat Kotu and others—19 Mad 349.*

Refusal by person who attended search under the Abkari Act to sign search list—Liability—S 31 —

A Sub Inspector of Abkari and customs visited a certain house with the object of searching it for contraband liquor He called upon the Accused and others as respectable inhabitants of the locality to accompany him and witness the search The Accused attended and witnessed the search, but refused to attest the search list tho' his attention was drawn to S 187 of the I P C His reason was that if he attested the search list he would have to attend at the enquiry and at Courts which would put him to expense The Magistrate fined him Rs 50

The Full Bench held—"For the purposes of the question we assume that a party called upon to attend and witness a search under S 103 Cr P C is under a legal obligation to attend the search and sign the search list S 187 I P C provides first in general terms, for the punishment when a person being bound by law to render assistance to a public servant in the execution of his public duty intentionally omits to assist. Secondly, it provides for the punishment when the assistance is demanded for certain specified purposes We think the "assistance" referred to in the former part of the section is *ejusdem generis* with the various forms of assistance specified in the latter half The "assistance" must have some direct personal relation to the execution of the duty by the public officer The signing of the search list required by S 103 is an independent duty imposed on the witness The word "assistance" as used in the Section implies that the party who assists is doing something which, in ordinary circumstances, the party assisted could do for himself. On the facts stated, the Accused is not guilty of an offence under S 187 I P C"

In the matter of Ramaya Naik—26 Madras 419.

Powers to enter and inspect places of manufacture and sale

32. The Commissioner, or a Collector, or any Abkari officer not below the rank of sub-inspector, or any Police officer duly empowered in that behalf, may enter and inspect, at any time by day or by night, any place in which any licensed manufacturer carries on the manufacture of any liquor or intoxicating drug, or draws toddy, or stores any liquor or intoxicating drug or toddy, and may enter and inspect, at any time during which the same may be open, any

place in which any liquor or intoxicating drug is kept for sale by any licensed person, and may examine, test, measure or weigh any materials, stills, utensils, implements, apparatus, liquor, or intoxicating drugs found in such place.

In cases of resistance entry may be made by force etc

33 If any officer empowered to make an entry under the provisions of the last two preceding sections cannot otherwise make such entry, it shall be lawful for him to break open any outer or inner door or window and to remove any other obstacle to his entry into any such place

Offenders may be arrested and contraband liquor and articles seized without warrant

34 Any officer of the Abkari, Salt, Police, Land Revenue or Customs departments, and any other person duly empowered may arrest without warrant in any public thoroughfare or open place other than a dwelling house any person found committing an offence punishable under section 55 or section 57 or section 58 of this Act, and in any such thoroughfare or place may seize and detain any liquor, drug or other article which he has reason to believe to be liable to confiscation under this Act or any other such law, and may search any person, vessel, vehicle, animal, package, receptacle or covering, upon whom, or in or upon which, he may have reasonable cause to suspect any such liquor, drug or other such article to be, or to be concealed.

[1]Provided that if the officer or person making the arrest under this section be not empowered under section 5 A to admit to bail, the person arrested shall be forthwith forwarded to an officer so empowered, if there be such an officer within a distance of five miles from the place where such arrest took place And it shall be the duty of such officer empowered as aforesaid to admit such person to bail if sufficient bail be tendered for his appearance before an Abkari officer having jurisdiction to inquire into the case

Power of Salt and Abkari officer of one circle to make an arrest in another—S 34 —

An Assistant Inspector of the Salt and Abkari Department of one circle received some information, then entered another circle and arrested the Accused under S 34 of Act I of 1886 The 2nd Class Magistrate who heard

[1] The proviso was added by section 3 of Madras Act No 1 of 1896.

the case believed the prosecution evidence that the Accused had committed an offence under 55, but acquitted the Accused on the ground that the Abkari officers of one circle had no power to enter another circle and detect an offence there Held that the question whether the officer who effected the arrest was acting within or beyond his powers in making the arrest does not affect the question whether the Accused were or were not guilty of the offences with which they were charged The order of acquittal was wrong as the Magistrate had jurisdiction under S 190 Cr P C to take cognisance of the offence

Followed 31 Cal 557 *Ravalu Kesigadu 26 Mad 124*

Arrest of persons refusing to give name or giving false name

35 Any person, who may be accused or reasonably suspected of committing an offence under this Act, and who on demand of any officer of the Abkari, Salt, Police, Land Revenue or Customs departments or of any other person duly empowered, refuses to give his name and residence or who gives a name or residence which such officer or person has reason to believe to be false, may be arrested by such officer or person in order that his name and residence may be ascertained

Searches how to be made

36 All searches under the provisions of this Act shall be made in accordance with the provisions of the Code of Criminal Procedure (V of 1898)

Officers of certain departments bound to assist

37 All officers of the departments of Police, Customs, Salt and Land Revenue shall be legally bound to assist any Abkari officer in carrying out the provisions of this Act

Offences to be reported etc

38 Every officer employed by Government, other than an Abkari officer, shall be bound to give immediate information to an Abkari officer,

and every Abkari officer shall be bound to give immediate information either to his immediate official superior or to an Abkari inspector,

of all breaches of any of the provisions of this Act which may come to his knowledge, and all such officers shall be bound to take all reasonable measures in their power to prevent the commission of any such breaches which they may know or have reason to believe are about or likely to be committed

Landholders and others to give information

39. All zamindars, proprietors, tenants, under tenants and cultivators who own or hold land on which there shall be any manufacture of liquor or intoxicating drugs not licensed under this Act shall in the absence of reasonable excuse be bound to give notice of the same to a magistrate or to an officer of the Abkari, Salt, Police, Customs or Land Revenue departments immediately the same shall have come to their knowledge

Persons arrested how to be dealt with

40. (1) When any person is arrested under the provisions of section 31 or section 34 or section 35 of this Act, the person arresting him shall, unless bail shall have been accepted under the provisions of section 31 [or of section 34],[1] forthwith forward him to an Abkari Inspector, or, if there be no such officer within a distance of ten miles from the place at which such arrest took place, to the nearest police station, with a report of the circumstances under which such arrest was made

Procedure by police station officer

(2) On any such person being brought to a police station as aforesaid, the officer in charge thereof shall either admit him to bail to appear when summoned before the Abkari officer as aforesaid within the limits of whose jurisdiction the offence with which he is charged is suspected to have been committed, or, in default of bail, shall forward him in custody to such officer

Procedure by Abkari officer empowered to inquire

(3) On any such person being brought in custody before such Abkari officer as aforesaid or appearing before him on bail [or when such Abkari officer as aforesaid has himself made the arrest][2] such officer shall hold such inquiry as he may think necessary and shall either release such person, or forward him in custody to, or admit him to bail to appear before the magistrate having jurisdiction to try the case

[3]Provided that if such inquiry is not commenced and completed on the day on which such person is arrested by or is brought or

[1] These words and figures were inserted by sect on 4 of Madras Act No. I of 1905.

[2] These words were inserted by section 4 of Madras Act No I of 1905.

[3] This proviso was added by sect on 5 of Madras Act No I of 1905.

appears before such Abkari officer, the said officer shall, if sufficient bail be tendered for the appearance of the person arrested, admit the said person to bail to appear on any subsequent day before himself or any other Abkari officer having jurisdiction to inquire into the case

Procedure in investigation by Police and by Excise officers—S 40 —

Application for revision against the order by the 3rd Class Magistrate of Cheyyar Taluk holding that he has jurisdiction to go on with a case and rejecting the petition from the Accused to discontinue the proceedings on a complaint against them

JUDGMENT

The case against the Accused was instituted on a charge-sheet alleging that they had committed offences punishable under S 55 of the Abkari Act I of 1886 All the Accused before the Court were arrested by the Police after investigation by the Police into the case The charge sheet had been filed with reference to Chapter XIV of the Cr P C The ground on which the Magistrate was asked to discontinue the proceedings was that the Police had no right to file a charge sheet or otherwise to proceed under Chapter XIV of the Cr P C in respect of an offence under the Abkari Act because Chapter XIV of the Cr P C is controlled by S 5 (2) of the Code and this is an offence under a Special Law which can be investigated and tried only according to the provisions of that Law We assume for the purpose of the present case, that the offence defined in S 55 is a cognisable offence We have been shown no authority directly in point But we think that on general grounds if S 5 (2) is to be given effect to the decision must in the present proceedings be in favor of the petitioners If the question were merely of a charge of an offence under a Special Act made after an investigation carried on in the ordinary way and not differing in material particulars from the investigation after which offences under the Penal Code are charged our conclusion might be different But in fact under the Abkari Act the Accused person has the right to a special procedure regulating the course of the investigation, and in the absence of any statement that this right has been respected by the Police, we must hold that he has been obliged to forego it owing to the Police holding the investigation instead of the Abkari officers, who would, it is presumed, proceed in accordance with the Abkari Act

The proceedings preliminary to the filing of a charge under the Abkari Act begin with the steps provided in S 40 for securing the production of the suspected person before the Abkari officer, who has jurisdiction to enquire into the case, by whomsoever the arrest has been made whether by the Abkari officer or Police officer or any of the persons specified in S 31 From

that point the Act contemplates that only the Abkari Department shall have the conduct of the proceedings and in the succeeding Sections 41 to 47 there is provision for a much more formal enquiry than any contemplated in Chapter XIV Cr P C There is no doubt, no explicit statement, so far as we can see, in these sections that the Accused is to be present at that enquiry or is entitled to cross examine the witnesses or submit his contentions But we are told that in fact the practice is to allow him to do so and in any case these sections direct a much more elaborate enquiry than is provided for in the Cr P C giving much more definite powers to the Abkari officer who holds that enquiry, and in some sections for instance, Sections 42 and 43, making the intervention of an officer of a certain status in the Department obligatory In these circumstances, the submission of the charge sheet by the Police officers instead of the Abkari officers, presumably in accordance with the Police instead of the Abkari procedure, has, in our opinion, placed a considerable disability on the Accused, depriving them of the procedure, to which they would ordinarily be entitled

That being so we cannot hold that the offence here has been investigated according to the provisions of the Special Law, the Abkari Act The case, it seems to us is similar to Lakshmi Narasayya vs Narasimhachari (21 I C 685=25 M L J 577) altho there is no distinct reference in the judgment to S 5 (2) Cr P C Taking this view we decide that the Lower Court's order and the submission to it by the Police of the charge sheet offend S 5 (2) which for the present purpose must be regarded as controlling Chapter XIV We must therefore, set aside the Lower Court's order on the ground that there are no proceedings properly instituted by means of any legal complaint or charge sheet before it

In re Kuppuswamy Naidu (Mad) A I R (M) 339=44 M L J 231=72 I C 175

Persons arrested to be admitted to bail.

41 It shall be the duty of any officer arresting any person under the powers given by section 31 of this Act, and of any police station officer or Abkari officer before whom a person arrested is brought or appears under the provisions of section 40 to release such person on bail if sufficient bail be tendered for his appearance before an Abkari Inspector or before a Magistrate as the case may be

Bond of accused and sureties.

42 Before any person is released on bail, a bond in such sufficient but not excessive sum of money as the officer admitting him to bail thinks proper shall be executed by such person and by one or more sureties, condi[illegible] that such person shall attend in accordance with the terms of

bond and shall continue to attend until otherwise directed by the Abkari Inspector before whom he was bailed to attend, or by the Magistrate, as the case may be.

Provided that the officer admitting any such person to bail may at his discretion dispense with the requirement of a surety or sureties to the bond executed by such person

The Governor in Council shall from time to time determine the form of the bond to be used in any local area.

Procedure in case of default of person admitted to bail to appear before Abkari Inspector

43. When by reason of default of appearance of a person bailed to appear before an Abkari Inspector such officer is of opinion that proceedings should be had to compel payment of the penalty or penalties mentioned in the bond of the person bailed or of the surety or sureties, he shall forward the bond to the magistrate having jurisdiction to try the offence of which the person bailed was accused, and the magistrate shall proceed to compel payment of the penalty or penalties in the manner provided by the Code of Criminal Procedure for the recovery of penalties in the like case of default of appearance by a person bailed to appear before his own court.

Default of person bailed to appear before Abkari Inspector—S 43 —

One P stood surety for M charged with an offence under S 55 of Act I of 1886 and executed a bail bond before the Police Station House Officer in a sum of Rs 25 for the appearance of the Accused before the Salt and Abkari Inspector, Conjeevaram circle, wherever required A summons issued by the Abkari Inspector for appearance on 11—7—03 was duly served on the Accused, but was disobeyed Three warrants were then issued but were returned unexecuted, the man having absconded The Abkari Inspector then sent the Bail bond to the stationary Sub-Magistrate Tiruvallur and requested him to proceed against the surety for the recovery of the penalty evidently under S 43 of the Abkari Act The Sub-Magistrate took a statement from the surety in which he explained that he was present when the summons was served on the Accused, and that his responsibility ceased with that The papers were then recorded by the Sub-Magistrate and when reminded by the Abkari Inspector, he informed him that he accepted the explanation by the surety and excused him Held that the Magistrate should proceed in the same manner and with the same powers as if the default had been made by a person bailed to appear before his own Court The Magistrate should therefore

call upon the defaulter to appear and show cause why the penalty should not be enforced and should proceed under S 514 Cr. P C

2. The Legislature did not intend to make the orders of the Station House Officers and the Abkari Inspectors final, and to take away by implication the liberty to appeal, but the Magistrate is not to be regarded as a mere executing officer but has the same discretion which he would have, if the defaulter had failed to appear before his own Court.

Q E Vs *Palayathan 18 Mad 48*

Abkari officers may summon witnesses

44. Any Abkari officer holding an inquiry in the manner provided in section 40 may summon any person to appear before himself to give evidence on such inquiry or to produce any document relevant thereto which may be in his possession or under his control.

Provided that no such Abkari officer shall summon any person to appear at a greater distance from the usual place of residence of such person than the Governor in Council may from time to time by rule direct

Terms of summons

45. Every summons issued under the last preceding section shall state whether the person summoned is required to give evidence or to produce a document, or both, and shall require him to appear before the said officer at a stated time and place

Examination of witnesses by Abkari Inspectors

46. Persons so summoned shall attend as required and shall answer all questions relating to such inquiry put to them by such officer Such answers shall be reduced into writing and shall be signed by such officer

Where attendance of witnesses to be dispensed with and procedure in such cases.

47. It shall be lawful for an abkari inspector, instead of summoning to appear before him any person who, from sickness or other infirmity, may be unable so to do, or whom by reason of rank or sex it may not be proper to summon, to proceed to the residence of such person and there to require him to answer such questions as he may consider necessary with respect to such inquiry, and such person shall be bound so to answer accordingly, and the provisions of section 46 shall apply to such answers

CHAPTER IX

PENALTIES

For illegal import etc

55 Whoever, in contravention of this Act, or of any rule or order made under this Act, or of any license or permit obtained under this Act,

(*a*) imports, exports, transports or possesses liquor or any intoxicating drug, or

(*b*) manufactures liquor or any intoxicating drug; or

(*c*) cultivates the hemp plant (*Cannabis sativa* or *Indica*) or [the coca plant (*Erythroxylon coca*), or collects any portion of such plants from which an intoxicating drug can be manufactured, or][1]

(*d*) taps any toddy producing tree, or

(*e*) draws toddy from any tree, or

(*f*) constructs or works any distillery or brewery, or

(*g*) uses, keeps or has in his possession any materials, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing liquor other than toddy or any intoxicating drug, or

[2][(*h*) bottles any liquor for purposes of sale; or]

(*i*) sells liquor or any intoxicating drug

shall, on conviction before a Magistrate, be punished for each such offence with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to six months, or with both

Conveying liquor without permits on behalf of the renter—Liability—S 55 (a) —

The Accused were convicted for conveying liquor without valid permits It appeared that the Accused produced permits by the Taluk Abkari Renter covering the amount of liquor which was being conveyed but they were made out in the names of third parties who were not present when the liquor was seized but on whose behalf the liquor was being conveyed at the time of the seizure Held that there is nothing in the Act to restrict the validity of a

[1] These words were added by section 15 of Madras Act No I of 1913

[2] This clause was inserted and the original clause (*h*) was relettered as (*i*) by section 15 of Madras Act No I of 1913

permit to the actual person to whom it is issued or prevent it from protecting liquor conveyed by third parties on behalf of the licensee

5 M H C R App 29.

Conveying toddy without permits to the renters shop—Liability—S 55 (a) —

The Accused Pottachi and another were the coolies of one K, toddy renter of Kandadevi in the Sivaganga Zamindari They were arrested by the Police on their way to the renter s shop with 3 measures of toddy taken from one of the villages attached to his lease, and were convicted of conveying toddy without a permit

Held that there is no doubt that they came within the letter of the law as they had no permit, but they were the sub renter s servants and acting for him, and their possession was that of their master Sub renters are authorised to grant permits within the limits of their farms, and the place in question was within such limits, while the quantity conveyed apparently does not exceed that which a sub renter s permit will cover These sections were enacted for the protection of renters and sub renters and whatever they can authorise others to do, they can themselves do The conviction is bad and accordingly quashed

Referred to in 11 Mad 472 *Q E Vs Pottachi 7 Mad 161*

Possession of liquor outside licensed area—S 55 (a) —

The Accused held a license for a certain Taluk He was found in possession of a certain quantity of arrack at a place not included in that area and outside the limits covered by his license The quantity of arrack found was more than that allowed to an unlicensed person Held he was guilty of an offence under S 55 (a)

Subramanya Mudali 1 Weir 636

Where under the terms of the license the licensee was prohibited from keeping or selling spirits at a place other than that specified in the license, and the license holder deposited a few drams of spirit in an unlicensed place for safe custody during night held (Per Wilkinson J) that tho the Act amounted to a violation of the terms of the license, it was not a violation, such as was contemplated by S 55 (Per Shephard J) —The act of the accused amounted to a breach of the law

1 Weir 636

Temporary deposit of liquor during transit—S 55 (a) —

A licensee cannot be punished under S 55 (a) for temporarily depositing the liquor in the out house of his dwelling place while it is in the course of transit to his shop and there is nothing in his license prohibiting the same.

1 Weir 635

Possession—Meaning of—S 55 (a)—

This is a revision case filed by Accused Nos 2 and 3 They have been convicted under S 55 (a) of Act I of 1886—The Madras Abkari Act—for being in possession of liquor without a proper license obtained for the purpose. The first Accused has not come up here at all It is argued on behalf of Accused Nos 2 and 3, that, there is no evidence on record to show that they were in possession of the liquor The finding of the lower Court is that the liquor was found in a cattle shed which belonged to Accused Nos 2 and 3 in which the first Accused was selling liquor When the authorities came upon the scene the first Accused seems to have locked up the shed and bolted, and the door of the shed had to be broken open to get access into it The lower Court no doubt holds that the 2nd and 3rd Accused should also be considered to have been in possession of the liquor because they were the owners of the shed, but I think the finding cannot be accepted, for in section 55 (a) the possession, I think, does not mean constructive possession, but actual possession It is only people who are actually in possession of contraband liquor without license that can be punished under the section In the circumstances of the case, there is no clear evidence, that Accused Nos 2 and 3 had anything to do with the liquor, and the only point against them is that they were the owners of the cattle-shed, which I think is not sufficient to justify a conviction as regards them Convictions set aside

Jayaramulu and another Vs Emp—(M) 45 M 842=71 I C 504

Shop keepers Licenses—Period of validity—S 55 (a) —

Licenses are granted to shop keepers by the Collector on the motion of the renter They last until cancelled by the Collector They do not cease on the cessation of the renter's lease

1 Weir 634

Possession—S 55 (a) (b) —

The Accused was found in possession of a skin which smelt of arrack and which was used for the purpose of conveying liquor Held, that the Accused was not guilty of an offence under S 55 (a)

1 Weir 640

Private share holders taking toddy to the shop—Whether permits necessary—S 55 (a) —

A salt petty officer saw the accused 14 in number conveying toddy which was 94 seers in all, and asked them to show their permits 4 of them produced permits but they turned out to be time expired, the rest had no permits at all They were then charged under S 55 for having transported toddy without permits The Accused pleaded that they were the private share holders of a

licensed shop, and they were taking the toddy for sale to that shop The Taluk Magistrate acquitted them on the grounds (1) that they had no intention to defraud the renter or the Government of revenue and (2) that their omission to possess permits "tho' seemingly an offence under the strict letter of the law is yet not such under the spirit of it"

On appeal held, that reading S 9 which prohibits the transport of toddy from one local area to another, together with S 55 which prescribes a penalty for unauthorised transport of liquor it appears that a separate permit is necessary only when the toddy is carried from the area included in the licensee s farm to another local area If it appears therefore that the Accused were conveying toddy from the licensee s trees to his shop within the limits of his farm, or that he had a general permit, and that they were acting as his servants or persons employed by him, they are not liable to be convicted As it was not shown, that the Accused were transporting toddy from the area included in the license into a different area, and that the licensee had not a general permit, we decline to interfere

Q E Vs Samboji 11 Mad 472=1 Weir 633

Failure to convey toddy drawn immediately to the shop—Liability—Ss 55 (a) 69 —

The 2 Accused were both licensed toddy drawers, and the charge against them was that they, after drawing toddy, left it for some hours in the gardens, which is found to be an offence under S 55 (a) of the Act, in that para 6 of the Government Notification No 220 dated 28—7—1888 directs that toddy is to be "immediately" conveyed to a distillery or shop Held that the rules framed by the Governor in Council have the force of Law, and in accordance with them, the holder of a tree-tapping license is bound to convey the pots containing toddy to a shop immediately after removal from the trees The word immediately must be held to be equivalent to 'within a reasonable time' and what is a "reasonable time must depend on the facts of each case, care being taken that opportunity for illicit sale is not encouraged Conviction confirmed

Q E Vs Jamnur and another—12 Mad 450

Son drawing toddy under father s license—Offence—S 55 (e) —

B was convicted under S 55 (e) for drawing toddy under cover of a license granted to another person, and sentenced to a fine of Rs 15 or in default to 15 days S R I B was the son of the licensee, and said that he was drawing toddy because his father had a boil on his arm, and could not ascend the tree

Held on reference, that the rule was *ultra vires*, that the Act clearly contemplates the delegation of work by the holder of a license or permit to draw toddy, and that the power given to the Governor in Council to frame rules

"to carry out the provisions of the Act" must be exercised within the limits which the Act recognises Conviction set aside

Q E Vs Bellara—11 Mad 250

Delegation of work of drawing toddy—Ss 12—55 Cl (c) —

Where a brother of the licensee was convicted for drawing toddy for him without a license, held that S 12 is not intended to prevent a license holder from delegating the actual work to a servant or agent

Followed 11 Mad 250 *Kaman—1 Weir 637.*

Wash —S 55 (g) —

A liquid mixture called "wash" consisting of jaggery and babool bark which is proved fit for distillation is "material" for the purpose of manufacturing liquor within the meaning of S 55 (g) of Act I of 1886

Gangayya—24 Mad 417=1 Weir 641

Transfer of license—S 55 (i) —

Licenses granted under the Act are personal The act does not authorise a person licensed to sell spirits to transfer his license to a purchaser of his business so that the latter may continue the business under the license granted to the vendor

(M) Chinnia Kondaiya and another—1 Weir 644

Sale of Ganja without license—S 55 (i) —

The provisions of the Abkari Act relating to intoxicating drugs manufactured from the hemp plant were brought into force in the Madras Presidency by the Notification of 12—11—88 Ganja is a preparation of the hemp plant Therefore persons selling it without license are liable to be punished under S 55 (i), in the absence of an exemption under S 71

Mohidin Kutti—1 Weir 646

Transfer of liquor by way of gift—S 55 (i) —

The Accused gave toddy at an unlicensed place as remuneration for watching his trees Held that such a transfer was otherwise than by way of gift and was punishable under S 55 (i) of the Abkari Act I of 1886

Sunderam—1 Weir 645

But where a boy rendered some service to the Accused, and the latter thereupon gave a present of some toddy for service rendered, and there was nothing to suggest the inference that toddy was to be given as remuneration for work to be done for several days as in 1 Weir 645 (Sunderam), held that the Accused was not liable to punishment under S 55 (i) of the Act

Patharanda Naickan—1 Weir 645.

Payment of wages by liquor—Whether sale—S 55 (1)—

The Accused gave the Tope watcher a bottle of toddy as wages in consideration of his service in watching the trees the previous night The question was whether this amounted to selling liquor Selling includes bartering for liquor, grain or any other articles It is clear that labour is not an article, so that even if the delivery of toddy for wages could be deemed to be included in the general term 'barter,' it is not included in that particular kind of barter which the Section mentions Held that payment of wages in liquor does not amount to a sale of liquor within the meaning of S 2 of Act III of 1864

Fol —25 B 696 2 P R 1903 *Appavu Goundan—9 Mad 141.*

Abkari peon—Whether Police Officer—Confession—S 55 —

An Abkari peon does not fall within the definition of the term "Police" in S 1 of the Madras Police Act XXIV of 1859

He is not a Police officer within that definition Therefore where a Magistrate convicted an accused person solely on an admission made to an Abkari peon, held that the conviction was neither bad in law, nor illegal

Followed 1 Weir 836 *1 Weir 632*

Gambling in Arrack shop—S 55 —

Gambling in an Arrack shop is not made an offence under the Abkari Act

1 Weir 647

For attempting to render denatured spirit fit for human consumption

[1]55A Whoever renders or attempts to render fit for human consumption any spirit, whether manufactured in British India or not, which has been denatured, or has in his possession any spirit in respect of which he knows or has reason to believe that any such attempt has been made, shall, on conviction before a Magistrate, be liable to imprisonment for a term which may extend to three months or to a fine, which may extend to one thousand Rupees or both. For the purpose of this section it shall be presumed, unless and until the contrary is proved, that any spirit, which is proved on chemical analysis to contain any quantity of any of the prescribed denaturants, is or contains or has been derived from denatured spirit.

For misconduct by licensee, etc.

56 Whoever, being the holder of a license or permit granted under this Act, [or being in the employ of such holder and acting on his behalf][2]

[1] Sec. 55A was inserted by Madras Act 10 of 1923.

[2] The words inserted by Sec. 2 of Madras Act 10 of 1923.

(*a*) fails to produce such license or permit on the demand of any Abkari officer or of any other officer duly empowered to make such demand ; or

(*b*) [wilfully does or omits to do anything][1] in breach of any of the conditions of his license or permit not otherwise provided for in this act ; or

(*c*) wilfully contravenes any rule made under section 29 of this Act ; or

(*d*) permits drunkenness, riot, or gaming in any place in which any liquor or intoxicating drug is sold or manufactured ; or

(*e*) permits persons of notoriously bad character to meet or remain in any such place,

shall, on conviction before a magistrate, be punished for each such offence with fine which may extend to two hundred rupees, or with imprisonment which may extend to three months, or with both.

Failure to maintain correct accounts—Liability—S. 56 :—

Where a shop-keeper who was bound by the conditions of his license to keep true accounts of the transactions in his shop failed to bring into his accounts liquor which had been received in his shop, and thereby maintained accounts which were incorrect, held that he should be deemed to have done an act in breach of a condition of his license.

(M.) Cr Rec. 1 of 1902.

Liability of Depot Writer—Ss. 56—64 :—

It is argued that petitioner being merely the Depot writer and not the Licensee is not liable to prosecution under S. 55 of the Abkari Act. It has been held by a Bench of this Court in an unreported case that Ss. 56 and 64 must be read together, and that not only the Licensee, but the actual offender (in this case the petitioner) is liable to prosecution for an offence under S. 56. Following this we must reject petitioner's contention.

In re Mathayya—17 Cr. L.J. 2=32 I.C. 130.

License whether necessary to be carried on the person—56 (b) :—

The Act does not reqoire that a licensee should carry the license on his person when carrying toddy under his license. A licensee not carrying such license cannot be said to be guilty of contravening any condition of his license.

1 Weir 646.

[1] These words were substituted for the words "does any Act" by section 17 of Madras Act No. I of 1915.

Contravention of License—S. 56 (b):—

Where a license required that the toddy drawn should be taken straight from the tree to the shop, held that it would not contravene the terms of the license to pour the contents of several pots into one pot in order to take the whole amount drawn to the shop in the evening.

1 Weir 648.

Contravention of terms of license—S. 56 (b) :—

The license provided that the licensee is bound to see that bottles containing spirits manufactured in India are labelled "Spirits Manufactured in India." Where therefore a licensee kept for sale bottles containing spirits without labels showing the country where they were manufactured as required by the license, held that he was guilty under 56 (b).

1 Weir 650.

Possessing Arrack below strength—S. 56 (b) :—

The Accused was convicted for possession of Arrack below the normal strength In revision it was held "it is common ground that a depot keeper like the Accused is allowed to have arrack of U. P. 32 degrees" When the cask was examined on the 16th January, the arrack in it was of the strength of U. P. 32·5. The question for decision is whether this weakening in the strength of the arrack to the extent of 5 pints is due to dilution. The license in the case shows that it is possible that arrack may lose strength to the extent of one degree from natural causes. Further when the Assistant Commissioner sealed the cask on the 28th April, he found the arrack to be U. P. 31·4 when the cask was produced in Court and examined on 23rd July, it was found to be 31·8. There was no suggestion that the seals were tampered with between the two dates. It is more likely that the difference of 5 pints was due to constant exposure on account of the frequent sales. The Accused given the benefit of doubt and acquitted

(M.) In re Marutha Pillay—30 I.C. 158.

Selling arrack below strength specified in the permit—S. 56 (b) .—

The evidence in the case shows clearly that spirits over 32 degrees was sold and the only question is whether Rule 229 of the Standing orders of the Board of Revenue which directs Abkari officers to allow wastage in bottling up to 2 per cent, can be pleaded as a defence to a prosecution under S. 56 (b).

The terms of the license are specific and the privilege extends only to the sale of arrack 32 degrees under proof. Sec. 56 (b) of the Madras Abkari Act 1886 renders any person who does any act in breach of the conditions of his license punishable.

I do not think the rule can be construed to mean that licensees can adulterate arrack so long as they do not exceed 2 per cent over the strength mentioned in the permit It is only a departmental rule for the guidance of its subordinates and fixes a 2 per cent margin as an allowance for evaporation in cases where there is reason to believe that the diminution in strength is due to natural causes.

The rule was not made under S 69, and is therefore not one having the force of law, or a rule to be read as part of the Act.

Under the Act, an offence is committed the moment a person sells arrack below the strength specified in the permit—no matter what the cause of variation may be It is true that the offence may be only technical but this is a matter for the officers instituting the prosecution Petition for revision dismissed

In re Damodara Naidu—(M) 31 I C 656

For adulteration etc by licensed vendor or manufacturer

57 Whoever, being the holder of a license for the sale or manufacture of liquor or of any intoxicating drug under this Act,

(*a*) mixes or permits to be mixed with the liquor or intoxicating drug sold or manufactured by him any noxious drug or any foreign ingredient likely to add to its actual or apparent intoxicating quality or strength, or any article prohibited by any rule made under section 29, clause (*k*), when such admixture shall not amount to the offence of adulteration under section 272 of the Indian Penal Code, or

(*b*) sells or keeps or exposes for sale as foreign liquor, liquor which he knows or has reason to believe to be country liquor; or

(*c*) marks the cork of any bottle or any bottle, case, package or other receptacle containing country liquor, or uses any bottle, case, package or other receptacle containing country liquor, with any mark thereon or on the cork thereof with the intention of causing it to be believed that such bottle, case, package or other receptacle contains foreign liquor, when such act shall not amount to the offence of using a false trade mark with intent to deceive or injure any person under section 482 of the Indian Penal Code, or

(*d*) sells or keeps or exposes for sale any country liquor in a bottle, case, package or other receptacle with any mark thereon or on the cork thereof with the intention of causing it to be believed that such bottle, case, package or other receptacle contains foreign liquor, when such act shall not amount to the offence of selling goods marked with a counterfeit trade-mark under section 486 of the Indian Penal Code,

shall, on conviction before a Magistrate, be punished for each such offence with fine which may extend to five hundred rupees or with imprisonment for a term which may extend to three months or with both.

Toddy when said to be noxious—S 57 —

Toddy in which germs have germinated is noxious and unfit for drink. If offered for sale or exposed for sale, the seller is liable to be punished under S 273 of the Penal Code

1 Weir 228

For possession of illicit liquor

58. Whoever without lawful authority has in his possession any quantity of liquor or of any intoxicating drug knowing the same to have been unlawfully imported, transported or manufactured, or knowing the prescribed duty not to have been paid therefor, shall, on conviction before a Magistrate, be punished with fine which may extend to one thousand rupees, or with imprisonment for a term which may extend to six months, or with both.

For vexatious search or arrest

59. Any Abkari officer or other person who, without reasonable ground of suspicion, enters or searches, or causes to be searched, any closed place ;

or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for anything liable to confiscation under this Act ,

or vexatiously and unnecessarily detains, searches, or arrests any person ,

or in any other way vexatiously exceeds his lawful powers,

shall, on conviction before a Magistrate, be punished for each such offence with fine which may extend to five hundred rupees or with imprisonment for a term which may extend to six months or with both.

For vexatious delay.

60. Any officer or person exercising powers under this Act who vexatiously and unnecessarily delays forwarding to an Abkari inspector or to the officer in charge of the nearest police station as required by section 40 of this Act, any person arrested or any article seized under this Act, shall, on conviction before a Magistrate, be punished with fine which may extend to two hundred rupees.

For abetment of escape of persons arrested, etc.

61. Any officer or person who unlawfully releases or abets the escape of any person arrested under this act, or abets the commission of any offence against this Act, or

acts in any manner inconsistent with his duty for the parpose of enabling any person to do anything wherehy any of the provisions of this Act may be evaded or broken, or the Abkari Revenue may be defrauded,

and any officer of any other department referred to in section 37 who abets the commission of any offence against this Act in any place,

shall, on conviction before a Magistrate for every such offence be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with hoth.

62. [*Penalty for Abkari officer refusiny to do his duty, using violence and for cowardice.*] *Repealed by section* 18 *of Madras Act No. I of* 1913.

For offences not otherwise provided for.

63. Whoever is guilty of any act or intentional omission in contravention of any of the provisions of this Act, or of any rule or order made under this Act and not otherwise provided for in this Act,

shall, on conviction before a Magistrate, be punished for each such wilful act or omission with fine which may extend to two hundred rupees.

Presumption as to commission of offence in certain cases

64 In prosecutions under section 55 it shall be presumed until the contrary is proved, that the accused person has committed an offence under that section in respect of any liquor or intoxicating drug, or any still, utensil, implement, or apparatus whatsoever for the manufacture of liquor other than toddy or of any intoxicating drug, or any such materials as are ordinarily used in the manufacture of liquor or of any intoxicating drug, for the possession of which he is unable to account satisfactorily ,

and the holder of a license or permit under this Act shall be punishable, as well as the actual offender, for any offence committed by any person in his employ and acting on his behalf under section 55 or section 56 or section 57 or section 58 as if he had himself committed the same, unless he shall establish that all due and reasonable precautions were exercised by him to prevent the commission of such offence

Provided that no person other than the actual offender shall be punished with imprisonment except in default of payment of fine

Arrack shop kept open after 8 p m —Liability of Licensee—

Madras City Police Act—(III of 1888) S 76 —

One Velayudha Mudaliar had licensed premises for sale of arrack and mutton in the City of Madras and he and his servants were found guilty by the Presidency Magistrate of having kept open the Arrack shop after 8 p m , and also of carrying on the business of sale of vegetables and mutton after the same hour It was contended in revision that the holder of the license could not be convicted if as a matter of fact he was not in the premises when the offence was committed , and that only his servants who were in charge of the premises at the time could be convicted under S 76 Held that if a shop is kept open after a prohibited hour by a licensee or by persons under his control and if he has a number of servants, there is nevertheless only one breach of the covenant in the license and therefore it is unreasonable if both the licensee and all his servants were to be convicted and separately fined as if each had committed a separate offence The difficulty in applying S 76 of the City Police Act has arisen out of the use of the word ' offenders ' in the plural in the Section but the section goes on to provide that the fine (in the singular) may be recovered from the person licensed and it also provides that any person (in the singular) so convicted should be ' liable to the forfeiture of his license As there is no license issued to the servant it cannot be said that he would be liable to the forfeiture of his license This is an indication that the legislature contemplated that only the licensee should be tried for the offence of breaking

his license. Where the legislature intends to provide for one or more persons being punished for a single offence it provides in clear terms for that being done. The holder of a license in Madras Abkari Act I of 1886 is declared by S. 64 to be liable for such breaches of the license as are mentioned in S. 55 as well as the offender, if the actual offender is in his employ and he fails to prove that he has done his best to avoid any breach of his license.

In re Velayudha Mudali and others—(M.) 62 I.C. 183.

What things liable to confiscation.

65. In any case in which an offence has been committed under this Act, the liquor, drug, materials, still, utensil, implement, or apparatus in respect [or by means,][1] of which an offence has been committed shall be liable to confiscation.

Any liquor or intoxicating drug lawfully imported, exported, transported, manufactured, had in possession or sold or toddy, lawfully drawn or tapped along with, or in addition to, any liquor, intoxicating drug or toddy, liable to confiscation under this section, and

the receptacles, packages and coverings in which any such liquor, intoxicating drug, materials, still, utensil, implement, or apparatus as aforesaid is or are found, and the other contents, if any, of the receptacles or packages in which the same is or are found, and the animals, carts, vessels, or other conveyances used in carrying the same,

shall likewise be liable to confiscation.

Act I of 1886. Knife—Seizure of—S. 65 :—

A "Knife" is not an utensil within the meaning of S. 65 of the Act and should not therefore be confiscated; nor is money liable to be confiscated under S. 65 of the Act. Where on a conviction for possession of liquor without a license, the Magistrate ordered the confiscation of the liquor and certain measures, held that the order of the confiscation of the measures must be set aside as illegal. *1 Weir 652.*

[1] Confiscation how ordered

66. When the offender is convicted or when the person charged with an offence under this Act is acquitted, but the Magistrate decides that anything is liable to confiscation, such confiscation may be ordered by the Magistrate.

[1] These words were inserted by section 19 of Madras Act No I of 1913.

Whenever confiscation is authorized by this Act, the Magistrate ordering it may give the owner of the thing liable to be confiscated an option to pay, in lieu of confiscation, such fine as the officer thinks fit.

When an offence under this Act has been committed, but the offender is not known or cannot be found, or when anything liable to confiscation under this Act and not in the possession of any person cannot be satisfactorily accounted for, the case shall be inquired into and determined by the Commissioner, or by any other officer authorized by the Governor in Council in that behalf, who may order such confiscation.

Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing the persons, if any, claiming any right thereto, and evidence, if any, which they produce in support of their claims.

[1][Provided further that if the thing in question is liable to speedy and natural decay or if the Commissioner or any other officer authorized by the Governor in Council in that behalf is of opinion that the sale would be for the benefit of its owner, he may at any time direct it to be sold, and the provisions of this section shall, as nearly as may be practicable, apply to the nett proceeds of such sale.]

Confiscation—Power to sell—S. 66 :—

A Magistrate who adjudges the confiscation of an article has power also to direct that the confiscated article may be sold or destroyed. It may be therefore reasonably construed as not only authorising the Magistrate to direct the sale of the confiscated article, but as also authorising him to direct the mode of sale.

In re Ponnusami Pillay—I. I.C. 79.

Act I of 1886. Confiscation—S. 66 :—

When an Accused is convicted under S. 55 of Act I of 1886, a Magistrate is not competent to order the confiscation of property in the possession of the Accused in respect of which no offence has been committed or which in no way is connected with the offence committed.

I Weir 651.

[1] This proviso was added by section 22 of Madras Act No. I of 1913.

Power to compound offences.

67. Any Abkari Officer specially empowered in that behalf may accept from any person whose license or permit is liable to be cancelled or suspended under clauses (*a*) and (*b*) of section 26 or who is reasonably suspected of having committed an offence under [section 55, 56, 57, 58 or 63,][2] a sum of money not exceeding two hundred rupees in lieu of such cancelment or suspension or by way of compensation for the offence which may have been committed, as the case may be; and in all cases whatsoever in which any property has been seized as liable to confiscation under this Act may release the same on payment of the value thereof as estimated by such officer.

On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the accused person, if in custody, shall be discharged, the property seized shall be released, and no further proceedings shall be taken against such person or property.

Provisions of the Criminal Procedure and Indian Penal Codes applicable to offences committed under this Act.

68. The provisions of the Criminal Procedure Code relating to execution so far as the same are applicable, and sections 67, 68 and 69 of the Indian Penal Code shall apply to all offences committed and to all persons punished under the provisions of this Act.

CHAPTER X.

MISCELLANEOUS.

Publications of rules and notifications.

69. All rules made and notifications issued under this Act shall be made and issued by publication in the *Fort St. George Gazette*, provided that all such rules and notifications whereby the doing or the not doing of anything is made punishable shall be published in three successive issues of the *Fort St. George Gazette* and for at least two months in the official Gazettes of the districts to which, or to parts of or to places in which, it may be determined that they shall apply. All such rules and notifications shall thereupon have the force of

[2] These words and figures were substituted for the words and figures "section 56 or section 63" by section 21 of Madras Act No. I of 1913.

law and be read as part of this Act and may in like manner be varied, suspended or annulled.

The conferring of powers and making of appointments.

70. All notifications and orders conferring powers, imposing duties and making appointments under this Act may respectively refer to the persons concerned specially by name or in virtue of their office or to classes of officials generally by their official titles; and all courts shall take judicial notice thereof.

Exception of medicated articles

[1]**71** [The Governor in Council may by notification either wholly or partially, subject to conditions as he may think fit to prescribe, exempt any liquor or intoxicating drug from all or any of the provisions of this Act, either throughout the Presidency or in any specified area, or for any specified period or occasion or as regards any specified person or class of persons]

Bar of actions

72. No action shall lie against the Secretary of State for India in Council, or against any Abkari officer, for damages in any civil court for any act *bona fide* done or ordered to be done in pursuance of this Act, or of any law for the time being in force relating to Abkari Revenue ,

And all prosecutions of any Abkari officer, and all actions which may be lawfully brought against the Secretary of State for India in Council or against any Abkari officer, in respect of anything done, or alleged to have been done, in pursuance of this Act, shall be instituted within six months from the date of the act complained of and not afterwards.

In such action if for damages, it shall be lawful for the court, if tender of sufficient amends shall have been made before the action was brought, in awarding the amount so tendered to refuse costs to the plaintiff and direct him to pay the costs of the defendant.

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[1] This section was substituted for the original section 71 by section 22 of Madras Act No. I of 1913.

SCHEDULE.

(SEE SECTION 2.)

Enactment.	Subject.	Extent of Repeal.
Act XIX of 1852 ...	For better securing the Abkari Revenue of the town and suburbs of Madras.	The whole, so far as it has not already been repealed
Act III of 1856 ...	An Act to amend Act XIX of 1852.	The whole.
[1]Act XVI of 1863 ...	The Excise (Spirits) Act, 1863.	So much as has not been repealed.
[2]Act III of 1864 (Madras)...	An Act for amending the Abkari laws of the Madras Presidency beyond the limits of the Madras Abkari as prescribed by Act XIX of 1852.	The whole, so far as it has not already been repealed.
[2]Act V of 1879 (Madras)...	The Madras Abkari Laws Amendment Act, 1879.	The whole.
[1]Act VIII of 1894 ...	The Indian Tariff Act, 1894.	Section 6.

[1] This item was inserted by section 23 of Madras Act No I of 1923.

[2] Madras Acts III of 1864 and V of 1879 are still in force in other portions of the Agency Tracts and in the Bhadrachalam and Pekapalli talaks of the Godavari district, *see Fort St. George Gazette*, 1899, Part I, page 1140, and *ibid*, 1880, Part I, page 327 respectively.

BOMBAY ACT NO. V OF 1878

THE BOMBAY ABKARI ACT, 1878.

[*As modified up to the 1st March 1922.*]

The Bombay Abkari Act, 1878 (Bom. V of 1878), has been amended by Bombay Acts III of 1892, V of 1901, I of 1903, III of 1905, IV of 1905, III of 1917 and II of 1919, repealed in part and amended by Bombay Acts III of 1886 and XII of 1912, and repealed in part by Acts XVI of 1895 and XXXVIII of 1920.

In reprinting the Act, repealed matter has been omitted, and amendments inserted, with explanatory foot-notes.

THE BOMBAY ABKARI ACT, 1878.

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Bombay Act No. V of 1878.[*]

(First published, after having received the assent of the Governor General, in the Bombay Government Gazette on the 19th September 1878.)

An Act to consolidate and amend the Abkari-law of the Presidency of Bombay.

Preamble

WHEREAS it is expedient to consolidate and amend the law relating to the import, export, transport, manufacture, sale and possession of liquor and of intoxicating drugs in the Presidency of Bombay; It is enacted as follows :—

I.—Preliminary.

Short title.

1. This Act may be cited as the Bombay Abkari Act, 1878.

Extent.

It extends to the whole of the Presidency of Bombay;

Commencement

and it shall come into force in any portion of the said Presidency on such date [*] as Government, by notification in the *Bombay Government Gazette*, directs

2 [*Repeal of enactments.*] *Repealed by Act XVI of* 1895.

Interpretation clause.

3. In this Act, unless there be something repugnant in the subject or context :—

(1) "Abkari-revenue" means revenue derived or derivable from any duty, fee, tax, fine [*] (other than a fine imposed by a Court of law) [*] or confiscation imposed or ordered, under the provisions of this Act, or of any other law for the time being in force relating to liquor or intoxicating drugs :

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[a] Bom. III of 1892 (as to mhowra flowers) is to be construed as part of Bom. V of 1878—see s. 1 of Bom. III of 1892.

It is also provided by s. 6 of Bom. III of 1892 that nothing in that Act shall be deemed to affect the operation of any law for the time being in force, or of any rule for the time being having the force of law, relating to mhowra flowers as an article of forest-produce.

[b] Bom. V of 1878 came into force in the whole of the Presidency of Bombay on the 1st January 1879—see Not. dated the 8th November 1878, *Bombay Government Gazette*, 1878, Part I, p. 1186.

[c—c] These words and brackets were inserted by Bom. XII of 1878, s. 1, cl. (a).

(2) "Abkari-officer" means a Commissioner, Collector or any officer or other person lawfully appointed, or invested with powers under section 6:

(3) "Commissioner" [a] includes an officer appointed by Government to be a Commissioner for the purposes of this Act: [a]

(4) "Collector" includes [b] any person appointed under section 5 to exercise the powers and perform the duties of a Collector under this Act:

(5) "Magistrate" means, in the City of Bombay, a Presidency Magistrate, and elsewhere, a Magistrate of the first or second class [c] or a Magistrate of the third class specially authorised in this behalf by the District Magistrate: [c]

(6) "toddy" means juice drawn from a cocoanut, brab, date or any kind of palm-tree, whether in its fermented or unfermented state:

[d] (7) "liquor" includes—

(*a*) spirits of wine, methylated spirits, spirits, wine, toddy, beer and all liquid consisting of or containing alcohol; and "spirits" means any liquor containing alcohol and obtained by distillation, whether it be denatured or not,

(*b*) any other intoxicating substance which Government may by notification in the *Bombay Government Gazette* declare to be liquor for the purposes of this Act:

(8) "country-liquor" includes all liquor produced or manufactured in India:

[a—a] These words were substituted for the original words "means, in Sind, the Commissioner in Sind, and elsewhere a Commissioner of Land-revenue, or if Government appoint any other officer to be a Commissioner for the purposes of this Act, such other officer" by Bom. III of 1886, Sch. B.

[b] The word "includes" was substituted for the original words "means a Collector of Land-revenue or" by Bom. III of 1886, Sch. B.

[c—c] These words were added by Bom. XII of 1912, s. 2, cl. (*b*).

[d] This clause was substituted for the original clause by Bom. XII of 1912, s. 2, cl. (*c*).

[a]" foreign liquor " includes all liquor imported into India by sea or land

provided that Government may by notification in the *Bombay Government Gazette* declare that any specified description of country-liquor shall for the purposes of this Act be deemed to be foreign liquor [a]

(9) " intoxicating drug " includes ganja, bhang, [b]charas and every preparation and admixture of the same, and every intoxicating drink or substance prepared from hemp, grain or other material not included in the term " liquor ", but does not include opium or anything included within the meaning of that word as defined in the[c] Opium Act, 1878 [d] and " hemp " means any variety of the hemp plant from which intoxicating drugs can be produced [d]

[ ]provided that Government may by notification in the *Bombay Government Gazette* declare that any other intoxicating substance together with every preparation and admixture of the same shall be deemed to be an intoxicating drug for the purposes of this Act

[e](10) " to import " means to bring into the Presidency of Bombay

" to export " means to take out of the said Presidency

" to transport " means to move from one place to another place within the said Presidency

[f] (11) " manufacture " includes every process whether natural or artificial, by which any excisable article is prepared, and also every process for the rectification, flavouring, blending or colouring of liquor

[a—a] This portion was added by Bom. VII of 1912 s. 1 cl. (d).

[b] The word " charas " was inserted by Bom. V of 1901 s. 3

[c] The word " Indian " repealed by Act XVI of 1895, first schedule is omitted.

[d—d] This addition was made by Bom. V of 1901 s. 3.

[e] The proviso was added by Bom. VII of 1912 s. 1 cl. (e).

[f] This clause was substituted for the original clause by [illegible] s. cl. (f).

[g] This clause was substituted for the original [illegible] s. cl. (g).

(12) "ser" means a weight of eighty tolas:

[a] (13) "mhowra flower" does not include the berry or seed of the mhowra tree:

[b] (14) "Denatured" means rendered unfit for human consumption in such manner as may be prescribed by Government by notification in the *Bombay Government Gazette*;

[c] (15) "excisable article" means and includes any liquor or intoxicating drug as hereinbefore defined:

[c] (16) in the case of foreign liquor "to bottle" means to transfer from a cask or other vessel to a bottle or other receptacle for the purpose of sale, whether any process of rectification be employed or not, and includes rebottling:

[c] (17) "to tap" means to prepare any part of a tree, or to use any means, for the purpose of causing juice to exude from the tree;

[c] (18) "India" means British India together with any territories of any Native Prince or Chief under the suzerainty of His Majesty exercised through the Governor General of India or through any Governor or other officer subordinate to the Governor General of India.

Spirit—Whether includes Toddy juice—S. 3 (7) —

Spirit includes toddy in a fermented state only and not the juice in toddy-producing trees.

Fol. 20 B. 764. *9 B. 462.*

Intoxicating drug—Meaning of—S. 3 (9):—

The "intoxicating" referred to in S. 3 cl. 9 cannot be confined to its derivative meaning, *viz.*, "poisonous." It must be taken in its popular sense which would mean and include—effects produce by cocaine. Cocaine therefore is an intoxicating drug in its popular sense.

Emp. Vs *Jamsetji Camo—27 Bom. 551.*

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[a] This clause was added by Bom. III of 1892, s. 1A.

[b] This clause was substituted for the original clause by Bom. II of 1919, s. 2 and Sch. 1, pt. II.

[c] Clauses (15) to (18) were added by Bom. XII of 1912, s. 1. cl. (*h*).

Drawing toddy whether means manufacture of liquor—S. 3 (11) :—

Drawing toddy is not manufacturing liquor as defined in S. 3 (11).

Q.E. Vs. Pirio Kalio—18 Bom. 428.

Manufacture—What is—S. 3 (11) :—

The word "manufacture" includes the preparation of a spiritous liquor by admixture and is not confined to processes which result in the production of alcohol.

Emp. Vs. Yeswant Soma—Rat. Un. Cr. 834.

Manufacture, sale or possession by one person on account of another.

[*] 3A. (1) Where any excisable article or hemp has been manufactured or sold or is possessed by any person on account of any other person, and such other person knew or had reason to believe at the time of such manufacture or sale that such manufacture or sale was on his account, or knows or has reason to believe that such possession is on his account, the article shall, for the purposes of this Act, be deemed to have been manufactured or sold by, or to be in the possession of, such other person.

(2) Nothing in sub-section (1) shall absolve any person who manufactures, sells or has possession of an excisable article or hemp on account of another person from liability to any punishment under this Act for the unlawful manufacture, sale or possession of such article.

II.—Establishment and Control.

Collectors charged with carrying out Act.

4. Subject to the control and direction of the Commissioner and the orders of Government, the Collectors are charged with the collection of the abkari-revenue, and with the carrying out of the provisions of this Act.

For the purposes of this Act, the Collector of Bombay shall be subordinate to such Commissioner as Government directs.

Special Collectors of Abkari-revenue may be appointed.

5. Government may, by notification in the *Bombay Government Gazette*, appoint any person other than the Collector of Land-revenue to exercise, in any district or place, all the powers and perform all

[*] Section 3A was inserted by Bom. XII of 1912, s. 2.

the duties conferred and imposed by this Act on a Collector, subject to such control, if any, in addition to that of the Commissioner and of Government, as Government may from time to time direct.

Subordinate officers

6. To aid the Collectors in carrying out the provisions of this Act, the Commissioners may, subject to such orders as may from time to time be passed by Government in this behalf, appoint such subordinate officers, with such designations, and assign to them respectively such powers and duties under this Act, as they deem fit.

Government, or, subject to such orders as aforesaid, the Commissioners, may invest any Government officer in any department either personally or in right of his office, or any other person, with such powers, and impose upon him such duties, under this Act as they deem fit, and any such officer shall thereupon exercise the said powers and discharge the said duties in addition to the powers and duties incident to his principal office :

Provided that powers under sections 36 and 40, clause (*b*), shall in no case be conferred on any officer of any department who is not superior in rank to a peon, or constable, and that any assignment of, or investment with, powers or duties made under this section may at any time be cancelled or varied by the authority which made it.

Punishment of subordinate officers for misconduct.

7. Subject to such orders as aforesaid, the Commissioners may at any time after inquiry recorded in writing fine, dismiss, suspend or reduce any subordinate officer appointed, or any officer on whom any additional powers or duties have been conferred or imposed by them under the provisions of the last preceding section, for any breach of departmental rules or discipline, or for carelessness, unfitness, neglect of duty or other misconduct.

Delegation of powers by Commissioners to Collectors.

8. The powers conferred on the Commissioners by the last two sections may be delegated by them, in whole or in part, to the Collectors, or to any Collector subordinate to them, and any such delegation may be at any time cancelled by the commissioners.

[*] III —IMPORT, EXPORT AND TRANSPORT.

Import of excisable articles

9 (1) No excisable article and no hemp shall be imported unless—

(*a*) Government has given permission, either general or special, for its import ,

(*b*) such conditions, if any, as Government may impose, have been satisfied , and

(*c*) the duty, if any, imposed under section 19 has been paid or a bond has been executed for the payment thereof

(2) Sub section (1) shall not apply to any article which has been imported into British India and was liable on such importation to duty under the Indian Tariff Act, 1894, or the Sea Customs Act, 1878

(3) Clauses (*a*) and (*b*) of sub-section (1) shall not apply to liquor manufactured in British India and declared by notification under clause (8) of section 3 to be foreign liquor

Importation of liquor—When complete—S 9 —

Under S 9 of Act V of 1878, the importation of liquor into a port is not complete until the person importing it has had an opportunity of paying the duty thereon at the custom house

Imp Vs A Montero—Rat Un Cr C 503.

Import of Cocaine by rail—S 9 —

The Accused forwarded a large consignment of cocaine from Lucknow to Bombay by rail, the consignment reached Bombay direct without transhipment and it traversed British territory the whole way throughout Held that neither the mere fact that cocaine was consigned from Lucknow to Bombay City, and conveyed thereto without transhipment at the frontier of the Bombay Presidency, nor the mere fact that the journey from Lucknow to Bombay was throughout, through British territory, prevented cocaine from coming within the provisions of the Act, as soon as it crossed the frontier.

Tyabally Carimbhoy—8 Bom L R 607.

Import of Cocaine—What amounts to—S 9 —

Act V of 1878 does not prohibit importing of cocaine generally , it merely prohibits its importation unless duty has been paid, because cocaine is a thing

[a] The chapter was substituted for the original chapter by Bom XII of 1912, s 3.

liable to the payment of duty under the Indian Tariff Act The intention and requirement of S 9 in the case of articles liable to duty under the Tariff Act are that the duty shall be paid That intention and requirement can only be contravened when reasonable opportunity to pay the duty has been afforded and has been evaded Ordinarily duty is required to be paid on shore usually after the ship conveying the dutiable goods has come to rest in the harbour or dock If this be so the mere entry into the harbour or tying up against the dock wall is not importing goods in contravention of the obligation to pay duty (S 43)

The word (import) is stated in the Act to include the conveying into any part of the Presidency of Bombay from any other part of India and therefore by implication and having regard to the common meaning of the word must include the conveying into any part of the Presidency of Bombay by sea

Emperor Vs *D Sylva—11 Bom L R 221=33 B 380*

Export and transport of excisable articles.

10 No excisable article and no hemp shall be exported or transported unless—

(*a*) the duty, if any, imposed under section 19, or

(*b*) if the article was previously imported, the duty, if any, imposed on its importation under the Indian Tariff Act, 1894, or the Sea Customs Act, 1878,

has been paid or a bond has been executed for the payment thereof

Power of Government to prohibit import export and transport of excisable articles

11 Government may by notification in the *Bombay Government Gazette*—

(*a*) prohibit the import or export of any excisable article or of hemp into or from the Bombay Presidency or any part thereof,

(*b*) prohibit the transport of any excisable article or of hemp

Passes necessary for import export and transport

12 No excisable article and no hemp exceeding such quantity as Government may prescribe by notification in the *Bombay Government Gazette*, either generally for the whole Presidency or specially for any local area, shall be imported, exported or transported except under a pass issued under the provisions of the next following section provided that—

(*i*) in the case of duty paid foreign liquor other than denatured spirit such passes shall be dispensed with, unless Government shall

by notification in the *Bombay Government Gazette* otherwise direct with respect to any local area;

(*ii*) unless Government shall otherwise direct, no pass shall be required for the import, transport and export of any excisable article or hemp conveyed under a pass issued by an officer duly authorized in this behalf from any place beyond the limits of the Bombay Presidency to any other place beyond the limits of the said Presidency.

Grant of passes for import, export and transport

13. Passes for the import, export or transport of excisable articles or hemp may be issued by the Collector or by any other Abkari-officer duly empowered in this behalf.

Such passes may be either general for definite periods of time and definite kinds of excisable articles, or special for specified occasions and particular consignments only.

Every such pass shall specify—

(*a*) the name of the person authorized to import, export or transport excisable articles or hemp;

(*b*) the period for which the pass is to be in force;

(*c*) the quantity and description of excisable articles or hemp for which it is granted; and

(*d*) the places from and to which excisable articles or hemp are to be imported, exported or transported, and in the case of places more than ten miles apart, the route by which they are to be conveyed.

[1] IV.—CULTIVATION AND MANUFACTURE.

Licenses required for cultivation and manufacture.

[1] **14.** (1) Save as hereinafter otherwise provided,

(*a*) no excisable article shall be manufactured;

(*b*) no hemp shall be cultivated or collected;

[1] This heading was substituted for the original heading "Manufacture" by Bom V of 1911, s. 3.

[1] Sections 14, 14A and 14B were substituted for the original sections 14 and 14A by Bom XII of 1912, s. 4.

(*c*) no toddy-producing tree shall be tapped ;

(*d*) no toddy shall be drawn from any tree ,

(*e*) no foreign liquor shall be bottled ; and

(*f*) no person shall use, keep or have in his possession any materials, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing any excisable article other than toddy except under the authority and subject to the conditions of a license granted in that behalf by the Collector

(2) No distillery or brewery shall be constructed or worked except under the authority and subject to the conditions of a license granted in that behalf by the Commissioner under section 15.

S 14 —

Held that the words "any tree' in S 14 and "every toddy producing tree' in S 20 of the Act V of 1878 mean all trees in the Presidency of Bombay to which the Act applies, from which toddy is drawn or produced They do not mean merely those in regard to which no special rights of drawing toddy previously ex sted

Ardesir Jehangir Vs Secretary of State—6 Bom 398

False declaration before Mamlatdar for purposes of Abkari License—

S 199 I P C —

For the purpose of securing a license or something of that sort from the Abkari officials the Accused made a false declaration to a Mamlatdar in the hope that he would obtain from the Mamlatdar what is called a certificate of solvency, a certificate which would enable him to obtain the license or whatever it was that he wanted from the Abkari authorities He was charged with an offence under 199 of the I P C in consequence of making this false declaration and he pleaded guilty to the charge

Held, on reference, that S 199 is very strict in its terms and deals with a false declaration only when the declaration is one which a Court of Justice or a public servant or other person is bound or authorised by law to receive as evidence It has not been pointed out to us that any Court of Justice or any public servant or any other person is either bound by law or authorised by law to receive such a declaration, as we have in this case, in evidence, and, therefore, in law no offence under S 199 of the I P C has been committed The Sessions Judge held that as there was a plea of guilty he could not deal with the case in appeal and therefore he referred it to us What I have said shows that the offence of which the accused was convicted has not been committed and, therefore, the conviction must be set aside and the fine refunded

Shah J —I agree

Emp Vs Rajappa Ramappa Kalal—(Bom) 17 Bom L R 222=28 I C 645

Possession of illicit articles.

[a] **14A.** No person without lawful authority shall have in his possession any quantity of any excisable article or hemp knowing the same to have been unlawfully imported, exported, transported or manufactured, or knowing that the prescribed duty has not been paid thereon.

Limit of possession of excisable articles and hemp.

[a] **14B.** (1) No person not being a licensed manufacturer or vendor of any excisable article or hemp and no licensed vendor except as authorized by his license shall have in his possession any quantity of any excisable article or hemp in excess of such limit as Government under section 17 may declare to be the limit of retail sale, except under a permit from the Collector :

provided that nothing in sub-section (1) shall extend to any foreign liquor, other than denatured spirit, in the possession of any common carrier or warehouseman as such, or purchased by any person for his *bona fide* private consumption and not for sale ;

(2) Notwithstanding anything contained in sub-section (1) Government may by notification in the *Bombay Government Gazette* prohibit the possession by any person or class of persons, either throughout the whole Presidency or in any local area, of any excisable article, either absolutely or subject to such conditions as it may prescribe.

Distilleries and warehouses.

[b] **15.** The Commissioner may

(*a*) establish a distillery in which spirit may be manufactured in accordance with a license granted under section 14 on such conditions as Government deem fit to impose ;

(*b*) discontinue any distillery so established ;

(*c*) license on such conditions as Government deem fit to impose the construction and working of a distillery or brewery ;

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[a] Sections 14, 14A and 14B were substituted for the original sections 14 and 14A by Bom. XII of 1912, s. 4

[b] This section was [illegible] section by Bom. XII of 1912, s. 5.

(*d*) establish or license a warehouse wherein any excisable article or hemp may be deposited and kept without payment of duty; and

(*e*) discontinue any warehouse so established.

[a] 15A No excisable article or hemp shall be removed from any distillery, brewery, warehouse or other place of storage, established or licensed under this Act, unless the duty, if any, imposed under section 19 has been paid or a bond has been executed for the payment thereof.

Removal of excisable article from distillery, &c

[b] V.—SALE.

[c] 16. (1) Except as is hereinafter otherwise provided, no [d] excisable article or hemp [e] shall be sold without a license or pass from the Collector: [f]

Sale of liquor, hemp and intoxicating drugs prohibited without license or pass

[f] provided [g] that no such license shall be necessary for the sale—

(1) by a person holding a license under this Act for the possession or cultivation of hemp and making such sale in accordance with the terms of such license, or

(2) by a cultivator or owner of any plant other than hemp from which any intoxicating drug is produced, of those portions of the plant from which such intoxicating drug is manufactured or produced, to a person holding a license under this section for the sale

[a] Section 15A was inserted by Bom XII of 1912 s 6.

[b] As to sale of spirituous liquors and intoxicating drugs in cantonments—see Act XV of 1910 ch III

[c] Sections 16 has been numbered sub-section (1) of section 16 as provided by Bom XII of 1912 s 7 (1)

[d—d] These words were substituted for the original words "liquor, no hemp and no intoxicating drug" by Bom XII of 1912 s 7 (1) (*a*)

[e] The first proviso repealed by Bom XII of 1912 s 7 (1) (*b*) is omitted

[f] This proviso was substituted for the original proviso by Bom V of 1901 s 8

[g] The word 'provided' was substituted for the original words 'provided further" by Bom XII of 1912, s 7 (1) (*c*)

of intoxicating drugs, or to a person duly licensed under this Act to manufacture or to export intoxicating drugs;

[a] and (3) of any foreign liquor legally procured by any person for his private use and sold by him or on his behalf or on behalf of his representatives in interest upon his quitting a station or after his decease.

[b] (2) On such conditions as the Commissioner may determine, a license for sale under the excise law for the time being in force in other parts of British India may be deemed to be a license granted in that behalf under this Act.

Wholesale and retail.

[c] 17. (1) Government may by notification in the *Bombay Government Gazette* determine a limit of quantity within which and beyond which the sale of any excisable article or hemp shall be deemed to be sale by retail and wholesale respectively; such limit may be fixed with respect to the whole Presidency of Bombay or to any local area, and with respect to purchasers generally or to any specified class of purchasers, and with respect to any specified occasion or generally;

(2) When any such limit of quantity has been prescribed for the retail sale of any excisable article or hemp, no quantity in excess of such limit shall be sold by retail to any one person at one time or to any one person in the aggregate on any one day:

provided that the Collector or any Abkari-officer duly empowered in this behalf may, subject to any rules that may be made under section 35A, give special orders for the occasional sale by retail of any excisable article or hemp in quantities exceeding such limits.

Prohibition of sale to children.

[d] 17A. No licensed vendor and no person in the employ of such licensed vendor or acting with the express or implied permission of such licensed vendor on his behalf, shall sell or deliver any excisable

[a] The word "and" and clause (3) were added by Bom XII of 1912, s. 7 (1) (*d*).

[b] This sub-section was added by Bom. XII of 1912, s 7 (2)

[c] Section 17 was substituted for the original section by Bom. XII of 1912, s. 8.

[d] Section 17A was inserted by Bom XII of 1912, s 8A.

article to any person apparently under the age of fourteen years whether for consumption by such person or by any other person and whether for consumption on or off the premises of such licensed vendor.

Sale of toddy.

18. No owner of any toddy-producing tree, and no person having a right to the juice of any such tree, and no drawer of toddy shall sell toddy, and no person transporting or removing toddy under a permit granted under [a] section 13, [a] shall sell the same, except—

(*a*) under a license granted under section 16, or

(*b*) to a person licensed to manufacture or sell liquor under this Act.

Sale of liquor—What is—S. 18.—

A licensee obtained certain earthen pots from a Kumbhar (potter) and in liquidation of the debt for the said pots handed over to the potter four days later some toddy. Held that as the toddy was not sold but given in liquidation of a debt, there can be no breach of the license which provided that "the licensee shall not receive wearing apparel, or ornaments or any consideration, except coin, for any toddy he may sell"

Imp. Vs. *Kanji Bhika Rai. Un Cr. C. 586.*

Power of Government to suspend provisions relating to toddy.

[b]**18A.** [c]Government may from time to time, by notification in the *Bombay Government Gazette*, suspend[d]any or [d] all the provisions relating to toddy contained in this Act with respect to any local area, and thereupon toddy may, during the period for which such notification continues in force, be drawn and sold without license or pass in such local area, notwithstanding anything in this Act.

[a—a] This phrase was substituted for the original phrase "clause (*b*) of section 12" by Bom XII of 1912, s. 9 (1)

[b] The second paragraph of section 18 has been numbered section 18A as provided by Bom. XII of 1912, s 9 (2)

[c] The words "provided that" repealed by Bom XII of 1912, s 9 (2) have been omitted

[d—d] These words were inserted by Bom XII of 1912, s 9 (2).

[a]V-A —SPECIAL PROVISIONS AS TO MHOWRA FLOWERS.

Special provisions as to mhowra flowers

[a]18B [b](1) Save as is provided in sub section (3), no person shall export from or import into any prescribed area or collect, transport, sell or have in his possession within any such area any quantity of mhowra flowers exceeding the prescribed limit in weight, except under the authority and subject to the terms and conditions of a license, permit or pass granted by the Collector or other officer duly empowered in this behalf

(2) In this section "prescribed area" means such area, comprising either the whole or some portion of the districts of [c] Broach [d] Kaira, Nasik (except the taluka of Peint), [ ] Thana and Kolaba [c] and of the talukas of Pardi, Bulsar and Chikhli of the district of Surat [c] as the Governor in Council from time to time notifies in this behalf, and "prescribed limit" means four seers or such greater quantity as the Governor in Council from time to time notifies in this behalf,

(3) Provided that during the period of two months from the 16th February to the 15th April, in each year or such longer period embracing the said two months as the Governor in Council from time to time by notification in the *Bombay Government Gazette* directs, no license, permit or pass shall be necessary for the collection, transport, sale or possession anywhere within the limits of the Talukas of Kalyan, Bhiwndi, Karjat, Murbad, Shahapur and Vada or within any other portion of a prescribed area which the Governor in Council thinks fit in a notification as aforesaid to specify, of any quantity of mhowra flowers which are the produce of that year and of the said talukas or of any or of either of them or other portion of a prescribed area, if any, so specified

[f] Provided further that during the period of five months from the 16th February to the 15th July in each year or such longer

[a] This head ng and section were inserted by Bom III of 1892 s 2
[b] Section 18A has been numbered section 18B as provided by Bom XII of 1912 s 9(2)
[c—c] Th se words were inserted by Bom. III of 1905 s 1(a)
[d] The word Kaira was inserted by Bom III of 1917 s 2 a).
[e—e] These words were inserted by Bom III of 1905, s 1(b)
[f] This proviso was added by Bom III of 1917 s 2 (b)

period embracing the said five months as the Governor in Council from time to time by notification in the *Bombay Government Gazette* directs, no license, permit or pass shall be necessary for the collection, transport, sale or possession, anywhere within the limits of the district of Kaira, of any quantity of mhowra flowers which are the produce of that year

VI —Duties

Duties on import export transport and manufacture

[a] 19. A duty at such rate or rates as Government shall direct may be imposed, either generally or for any specified local area, on any excisable article

(*a*) imported in accordance with the provisions of sub section (1) of section 9, or

(*b*) exported or transported in accordance with the provisions of section 10, or

(*c*) manufactured under a license granted in accordance with the provisions of section 14 or section 15

provided that

(*i*) duty shall not be so imposed on any article which has been imported into British India and was liable on such importation to duty under the Indian Tariff Act, 1894, or the Sea Customs Act, 1878,

(*ii*) the duty on denatured spirits or beer manufactured in India shall, unless Government [b] otherwise directs, be equal to the duty to which denatured spirits or beer respectively imported into British India by sea are or is liable under the Indian Tariff Act, 1894, or any other law for the time being in force relating to the duties of customs on goods imported into British India

Explanation—Duty may be imposed under this section at different rates according to the places to which any excisable article is to be removed for consumption, or according to the varying strengths and quality of such article

[a] Sections 19 and 19A were substituted for the original section 19 by Bom XII of 1912 s 10

[b] The words repealed by Act XXXVIII of 1920 s 2 Sch I Part IV are omitted

[a] 19A Subject to any rules to regulate the time, place and manner of payment made by the Commissioner in this behalf, the duty referred to in the foregoing section may be levied in one or more of the following ways —

Manner of levying duty

(*a*) in the case of excisable articles imported in accordance with the provisions of sub-section (1) of section 9,

(*i*) by payment either in the province of import or in the province or territory of export, or

(*ii*) by payment upon issue for sale from a warehouse established or licensed under section 15,

(*b*) in the case of excisable articles exported in accordance with the provisions of section 10, by payment either in the province of export or in the province or territory of import,

(*c*) in the case of excisable articles transported in accordance with the provisions of section 10

(*i*) by payment in the district from which they are transported,

(*ii*) by payment upon issue for sale from a warehouse established or licensed under section 15,

(*d*) in the case of spirit or beer manufactured in any distillery established or any distillery or brewery licensed under section 15—

(*i*) by a rate charged upon the quantity produced in or issued from the distillery or brewery, as the case may be, or issued from a warehouse established or licensed under section 15, or

(*ii*) by a rate charged in accordance with such scale of equivalents, calculated on the quantity of materials used or by the degree of attenuation of the wash or wort, as the case may be, as Government may prescribe,

(*e*) in the case of intoxicating drugs, manufactured in accordance with the provisions of section 14, by payment upon the quantity produced or manufactured in accordance with the provisions of

[a] Sections 19 and 19A were substituted for the original section 19 by Bom XII of 1912, s 10.

section 14 or issued from a warehouse established or licensed under section 15:

provided that where payment is made upon issue for sale from a warehouse established or licensed under section 15 such payment shall be at the rate of the duty in force at the date of issue from the warehouse;

provided further that where one and the same person is permitted—

(*i*) to manufacture or import and to sell, or

(*ii*) to manufacture and export country liquor or any intoxicating drug,

such duty may be levied in consideration of the joint privileges granted as the Collector, acting under the general or special orders of Government, deems fit.

Duty on tapping of toddy trees

20. For every toddy-producing tree from which toddy is drawn there shall, if Government so direct, be levied for any period during which such tree is tapped [a] or licensed to be tapped [a] such duty as Government from time to time directs;

and every license for drawing toddy granted under section 14 shall specify, in addition to any other particulars prescribed by Government under section 30,—

(*a*) the number, description and situation of the trees to be tapped;

(*b*) the amount of duty to be levied in respect of each tree included in the license;

(*c*) the instalments, if any, in which and the periods at which the said duty shall be leviable.

Duty by whom payable

21. The said duty shall be leviable primarily from the person holding the license to draw toddy, and in default by him, or if the trees are tapped without license, from the owner of the trees.

[a—a] These words were inserted by Bom XII of 1912, s. 11.

22. When any duty is recovered under the last preceding section from the owner of the trees, he shall be entitled to assistance in recovering the same from the holder of the license under the provisions of the law for the time being in force relating to the recovery by superior land-holders of their dues from their tenants.

Owner entitled to assistance in recovering from licensee duty paid by him

23. It shall be lawful for the Government within any local area to which they shall deem fit to apply the provisions of this section, instead of directing the levy of a duty under section 20 on each tree from which toddy is drawn, to farm the right of drawing toddy from all toddy-producing trees within such area for such period and on payment of such duty either in the lump or in periodical instalments and on such conditions as they shall deem fit to impose

Farming of right of drawing toddy within local area

Within any such area no person shall draw toddy from any toddy-producing tree, except with the written permission of the person to whom the said right is farmed.

24 [*Repealed* by Bombay Act XII of 1912]

25 The privilege of drawing toddy from trees the right to which vests in Government may be disposed of annually by auction or otherwise on such terms as the Collector, acting under the general orders of Government, deems fit

Privilege of drawing toddy from Government trees

26, 27, 27A to 27E and 28 [*Repealed* by Bombay Act XII of 1912]

29. When any amount is due to [a] any farmer of the right of drawing toddy from any person who has drawn toddy from any toddy-producing tree, such farmer may apply to the Collector to recover such amount on his behalf ; and the Collector may, in his discretion, recover such amount as if it were an arrear of land revenue, and shall pay any amount so recovered to the applicant :

Farmer may apply to Collector to recover amounts due to him

[a] The words repealed by Bom. XII of 1912, s 13, are omitted

Provided that the execution of any process issued by the Collector for the recovery of such amount shall be stayed if the person from whom it is sought to recover the same institutes a suit in the Civil Court to try the demand of the farmer, and furnishes security to the satisfaction of the Collector for the payment of the amount which the Court may adjudge to be due from him to such farmer.

Provided also that nothing contained in this section or done thereunder shall affect the right of any such farmer to recover by suit in the Civil Court or otherwise any amount due to him from any such person as aforesaid.

VII.—LICENSES, &c.

Form and conditions of licenses, &c.

[a]30. Every license, permit or pass granted under this Act shall be granted on payment of such fees, if any, and subject to such restrictions, and on such conditions, and shall be in such form and contain such particulars, and may, in case any fee or duty payable by the holder be not duly paid, impose liability for interest thereon at such rate, as Government in the case of licenses and the Commissioner in the case of permits and passes, may direct in rules or orders made either generally or in any particular instance in this behalf, such rules or orders being not inconsistent with this Act.

Counterpart agreement to be executed and security to be given by licensees.

31. Every person taking out a license for the manufacture or sale of any [b] excisable article or hemp [b] under this Act shall execute a counterpart agreement in conformity with the tenor of his license, and shall give such security for the performance of his agreement as the Collector may require.

[c] And every person taking out a license to cultivate hemp under this Act shall, if called upon by the Collector so to do, give such security for the observance of the conditions of such license as the Collector may require.

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[a] Section 30 was substituted for the original section by Bom. XII of 1912, s. 14.

[b—b] These words were substituted for the original words "liquor or intoxicating drug" by Bom. XII of 1912, s. 15.

[c] This addition was made to section 31 by Bom. V of 1901, s. 11.

[a] 32 (1) Subject to such restrictions as Government may prescribe, the authority granting any license, permit or pass under this Act may cancel or suspend it—

Cancellation of license permit or pass

(a) if any duty or fee payable by the holder thereof be not duly paid, or

(*b*) in the event of any breach by the holder of such license, permit or pass or by his servant or by any one acting with his express or implied permission on his behalf, of any of the terms or conditions of such license, permit or pass, or of any license, permit or pass previously held by such holder, or

(*c*) if the holder thereof, or any person in the employ of such holder or any person acting with his express or implied permission on his behalf is convicted of any offence under this Act or any law for the time being in force relating to abkari revenues, or if the holder of the license, permit or pass is convicted of any cognizable and nonbailable offence or of any offence under the Indian Merchandise Marks Act, 1889, or of any offence punishable under sections 482 to 489 (both inclusive) of the Indian Penal Code, 1860, or of any offence punishable under No 8 of the schedule to section 167 of the Sea Customs Act, 1878

(2) When a license, permit or pass held by any person is cancelled under clause (*a*) or clause (*b*) of sub section (1), the authority aforesaid may cancel any other license permit or pass granted to such person under this Act or under any other law for the time being in force relating to abkari-revenue or under the Opium Act, 1878

(3) The holder shall be entitled to no compensation for the cancellation or suspension of his license, permit or pass under this section, nor to refund of any fee paid or deposit made in respect thereof

[b] 32A (1) Whenever the authority granting a license considers that it should be cancelled for any cause other than those specified in section 32, he may cancel the license either—

Cancellation for other reasons.

[a] Sections 32, 32A and 32B were substituted for the original section 32 by Bom. XII of 1912 s. 16.

[b] Sections 32, 32A and 32B were substituted for the original section 32 by Bom. XII of 1912 s. 16.

(*a*) on the expiration of not less than 15 days' notice in writing of his intention to do so ; or

(*b*) forthwith without notice.

(2) When a license is cancelled under sub-section (1) the authority cancelling the license shall pay to the licensee a sum equal to the amount of the fees payable in respect thereof for fifteen days and such further sum in compensation as the Commissioner may direct.

(3) When a license is cancelled under this section, any fee paid in advance or deposit made by the licensee in respect thereof shall be refunded to him, less the amount, if any, due to Government.

Attachment of license

[*] 32B. Notwithstanding anything contained in section 32 when a license is liable under that section to cancellation owing to default in the payment of any duty or fee payable by the holder thereof the authority granting the license may attach and take such license under management, and if the profits received from such management after meeting all the expenses of such attachment and management are less than the amount of the arrears for which the license was attached and the amount falling due on such license during the remaining period of such license, the difference shall be recovered from the licensee as if it were a duty or fee leviable under anyone of the foregoing provisions of this Act, and in the event of the said profits exceeding the amount so due under the license, the licensee shall not be entitled to receive any of the said profits.

VIII.—General Provisions

Certain licensees required to keep measures, &c.

33 Every person who manufactures or sells [*] any excisable article [*] under a license granted under this Act shall be bound—

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[a] Sections 32, 32A and 32B were substituted for the original section 32 by Bom XII of 1912 s 16

[a—a] These words were substituted for the original word "liquor" by Bom. XII of 1912, s 17, cl (*d*)

(*a*) to supply himself with such measures [a] and weights [a] and with such instruments for testing the strength or quality of liquor, as the Collector prescribes, and to keep the same in good condition, and

(*b*) on the requisition of any Abkari-officer duly empowered in this behalf at any time to measure [b] weigh, or test any excisable article [b] in his possession in such manner as the said Abkari-officer may require.

Recovery of duties, &c.

34. All duties, taxes, fines and fees leviable under any of the foregoing provisions of this Act or of any license permit or pass issued under it, and all amounts due from any farmer under this Act, may be recovered from [c] any person liable [c] to pay the same, or from his surety (if any) as if they were arrears of land-revenue.

IX.—POWERS OF ABKARI-OFFICERS.

Power of Government to frame rules.

[d] 35. (1) Government may make rules for the purpose of carrying out the provisions of this Act or any other law for the time being in force relating to Abkari-revenue.

(2) In particular and without prejudice to the generality of the foregoing provision, Government may make rules—

(*a*) regulating the delegation of any powers by the Commissioner or by Collectors;

(*b*) prescribing the powers and duties of officers of the Abkari Department;

(*c*) regulating the import, export or transport of any excisable article or hemp;

[a—a] These words were inserted by Bom. XII of 1912, s. 17, cl. (*b*).

[b—b] These words were substituted for the original words "put or test the strength or quality of any liquor" by Bom. XII of 1912, s. 17, cl. (*c*).

[c—c] These words were substituted for the original words "the person primarily liable" by Bom. XII of 1912, s. 18.

[d] Sections 35 and 35A were substituted for the original section 35 by Bom. XII of 1912, s. 19.

(*d*) regulating the periods and localities for which licenses for the wholesale or retail vend of any excisable article or hemp may be granted ;

(*e*) providing for the consulting of public opinion and prescribing the procedure to be followed and the matters to be ascertained before any license for such vend is granted for any locality ;

(*f*) prohibiting the employment by the license-holder of any person or class of persons to assist him in his business in any capacity whatsoever ;

(*g*) prescribing the persons or classes of persons to whom any excisable article may or may not be sold ;

(*h*) for the prevention of drunkenness, gambling or disorderly conduct in or near any licensed premises and the meeting or remaining of persons of bad character on such premises ;

(*i*) regulating the grant of expenses to persons called on to give information in investigations conducted by Abkari-officers, and of compensation to persons charged with offences punishable under this Act and acquitted.

(3) The power to make rules under this section shall be subject to the condition of previous publication:

Provided that any such rules may be made without previous publication if Government consider that they should be brought into force at once.

Power of Commissioner to frame rules.

[a] **35A.** The Commissioner may make rules—

(*a*) regulating the manufacture, supply or storage of any excisable article or hemp including—

(*i*) the erection, inspection, supervision, management and control of any place for the manufacture, supply or storage of such article or hemp, and the fittings, implements and apparatus to be maintained therein ;

[a] Section 35 and 35A were substituted for the original section 35 by Bom. XII of 1912, s. 19.

(*ii*) the cultivation of hemp and the collection of the spontaneous growth of such plant and the preparation of any intoxicating drug from such growth ;

(*iii*) the tapping of toddy-producing trees and the drawing of toddy from such trees ;

(*iv*) the bottling of foreign liquor ;

(*b*) regulating the deposit of any excisable article or hemp in a warehouse and the removal of such article from any such warehouse or from any distillery or brewery ;

(*c*) prescribing in the case of any excisable article the way in which the duty on such article shall be levied ;

(*d*) prescribing the scale of fees or the manner of fixing the fees payable in respect of any privilege, license, permit or pass or of the storing of any excisable article or hemp ;

(*e*) regulating the time, place and manner of payment of any duty or fee ;

(*f*) prescribing the restrictions under and the conditions on which any license, permit or pass may be granted, including—

(*i*) the prohibition of the admixture with any excisable article of any substance deemed to be noxious or objectionable ;

(*ii*) the fixing of the strength, price or quantity in excess of or below which any excisable article shall not be sold or supplied, and the quantity in excess of which denatured spirit shall not be possessed, and the prescription of a standard of quality for any excisable article ;

(*iii*) the prohibition of sale except for cash ;

(*iv*) the prescription of the days and hours during which any licensed premises may or may not be kept open and provision for the closure of such premises on special occasions ;

(*v*) the prescription of the nature of the premises on which any excisable article may be sold and the notices to be exposed at such premises ;

(*vi*) the prescription of the accounts to be maintained and the returns to be submitted by license-holders ;

(*vii*) the regulation or prohibition of the transfer of licenses ;

(*g*) (*i*) declaring the process by which spirits shall be denatured in the areas to which this Act extends ;

(*ii*) for causing such spirits to be denatured through the agency or under the supervision of Government officers ;

(*iii*) for ascertaining whether such spirits have been denatured ;

(*h*) providing for the destruction or other disposal of any excisable article deemed to be unfit for use ;

(*i*) regulating the disposal of confiscated articles ;

(*j*) prescribing the occasions on which special orders may be granted under section 17 for the sale by retail of larger quantities of country liquor or intoxicating drugs than are prescribed in any notification issued under the said section, and the conditions on which such sales may be made ;

(*k*) prescribing the amoont of security to be deposited by the holder of any license, permit or pass for the performance of the conditions for the same.

Powers exercisable by Abkari officers on information that liquor, &c., is unlawfully manufactured, &c.

36. Any Commissioner or Collector, or other Abkari-officer duly empowered in this behalf, may—

(*a*) enter and inspect, at any time by day or by night [a] any land on which toddy-producing trees are growing, whether such trees are licensed for tapping or not, and [a] any [b] warehouse, shop or premises in which any licensed manufacturer or vendor carries on the manufacture or sale of [c] any excisable article or hemp [c] or draws toddy, or stores [c] any excisable article or hemp [c] and examine, test, measure or weigh any such person's stock of [c] any excisable article or hemp [c] or materials ; or

[a—a] These words were inserted by Bom XII of 1912, s 20, cl. (*b*).

[b] The word "warehouse" was inserted by Bom. V of 1901, s 13.

[c—c] These words were substituted for the original words by Bom XII of 1912, s. 20, cl (*a*)

(*b*) enter, at any time by day or by night, any building, vessel, [a] vehicle or enclosed place in which he has reason to believe that [b] any excisable article or hemp [b] liable to confiscation under this Act is manufactured, kept or concealed or that toddy is drawn, or that any still, utensil, implement or apparatus is used, kept or concealed for the purpose of manufacturing [b] any excisable article [b] contrary to the provisions of this Act ; and

(*c*) in case of resistance, break open any door and remove any other obstacle to his entry into any such shop, premises, building, vessel, [a] vehicle or other place ; and

(*d*) seize [b] any excisable article or hemp [b] and any material used in the manufacture thereof, and any still, utensil, implement or apparatus, and any other thing which he has reason to believe to be liable to confiscation under this Act, or under any other law for the time being in force relating to Abkari-revenue ; and

(*e*) detain and search and, if he think proper, arrest any person whom he has reason to believe to be guilty of any offence under this or any other law for the time being in force relating to Abkari-revenue.

Power to seize liquor, &c., in open places and to detain, search and arrest.

37. Any Commissioner or Collector, or other Abkari-officer duly empowered in this behalf, may—

(*a*) seize in any open place or in transit, any [c] excisable article, hemp [c] or any other thing which he has reason to believe to be liable to confiscation under this or any other law for the time being in force relating to abkari-revenue ;

(*b*) detain and search any person whom he has reason to believe to be guilty of any offence against this or any other such law and, if such person has any [d] excisable article, hemp [d] or other thing in his possession, arrest him.

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[a] The word "vehicle" was inserted by Bom XII of 1912, s. 20, cl. (*c*).

[b—b] These words were substituted for the original words by Bom. XII of 1912, s. 20, cl. (*d*)

[c—c] These words were substituted for the original words by Bom. XII of 1912, s. 21.

[d—d] These words were substituted for the original words by Bom. XII of 1912, s. 21.

Search of a person—Whether Panchayat necessary—S. 37 :—

Sub-Inspector M of the Abkari Department ordered o Customs Constable P to search a man who had a red handkerchief in his hand and who was found in the street because he thought he was in possession of cocaine without licence. The Accused then came up at that moment in a threatening manner and asked the Constable what he meant by searching his man. The Constable showed him his belt and told the Accused that he belonged to the Customs. The Accused then gave him a push with his hands and said "you cannot search him." Then the Sub-Inspector went forward and warned the Accused that he should not prevent a Government servant from discharging his duty, that he himself was a Sub-Inspector in the Excise Department, and that he would search the man himself as he had lawful authority in that behalf. He raised his sleeves with a view to search the man. The Accused thereupon gave the Sub-Inspector a blow with his clenched fist on his chest, shoved him, and said "soover, get away." In the meantime the man whom the Sub-Inspector wished to search absconded. The Accused was charged (i) firstly for assaulting the Sub-Inspector ; (ii) secondly for assaulting the Abkari Constable 353 I.P.C. ; and (iii) thirdly, for 186 I. P. C. for voluntarily obstructing one of the said servants in the lawful discharge of his public functions. He was convicted on all the three charges.

It was contended in appeal that the officers in question were not acting in the discharge of a lawful duty as public servants, because according to S. 38 of the Abkari Act, all searches under S. 37 of the Act shall be made in accordance with the provisions of Cr. P. C, and that no search could be made of any person, by any public servant, acting under law, without previously calling a Panch and conducting a search in the presence of that Panch.

Held that there was no provision in Cr. P. C which requires that a Panch should be called in the case of the search of a person. If a man by his own tortious act with-hold the evidence by which his case would be manifested, every presumption to his disadvantage will be adopted.

Emp. Vs *Thaver Issaji Boree—13 Bom L.R. 635=11 I.C. 993.*

Searches how made

38. All searches under the two last preceding sections shall be made in accordance with the provisions of the Code of Criminal Procedure, 1898. [a]

Search of a cart—No witnesses—Whether—S. 103 Cr. P.C. Applies—S. 38 :—

An Abkari officer on suspicion searched the cart in which the Accused was travelling and found a bottle of liquor. The Magistrate found that the search had not been made according to the provisions of S. 103 Cr. P. C.

[a] The reference to Act X of 1872 is altered in accordance with Act V of 1898, s. 3.

extended to Abkari cases by S. 38 *i.e.*, it was not made in the presence of 2 or more persons, nor was any list made of the things found, and considering that oral evidence was inadmissable under S. 91 I. E. A. acquitted the Accused. Held, that a cart is not such a place as is contemplated in S. 103 Cr. P. C. nod therefore its provisions cannot be applied to the search of a cart.

Makan Khosal and others—Cr. Rg. 18—6—85.

Arrest without warrant.

[a] 38A. Any Commissioner or Collector or Abkari-officer duly empowered in this behalf may arrest without an order from a Magistrate and without warrant any person who obstructs him in the execution of his duty under this Act or who has escaped or attempts to escape from custody in which he has been or is lawfully detained under this Act.

Disposal of person arrested.

[a] 38B. Subject to the provisions as to bail hereinafter contained every person arrested under section 38A shall without any unnecessary delay be taken or sent by the person arresting him before a Magistrate having jurisdiction in the case or before the officer in charge of a police station.

Procedure.

[a] 38C. The provisions of section 61 of the Code of Criminal Procedure, 1898, [a] shall apply to all arrests made without warrant by Abkari-officers.

Refusal to give name and residence.

[a] 38D. (1) When any person who in the presence of any officer of the Abkari Department of such rank as Government may prescribe has committed or has been accused of committing an offence under this Act refuses, on demand of such officer, to give his name and residence or gives a name and residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required:

Provided that, if such person is not resident in British India, the bond shall be secured by a surety or sureties resident in British India.

[a] Section 38A, 38B, 38C and 38D were inserted by Bom. XII of 1912, s. 22.

(3) Should the true name and residence of such person not be ascertained within twenty-four hours from the time of arrest or should he fail to execute the bond or, if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

Officers bound to assist.

[a] **39.** All village officers, all village servants useful to Government and all officers of the departments of Police, Forest, Customs, Salt and Revenue and of the Bombay, Karachi and Aden Port Trusts, shall be bound—

(*a*) to give immediate information to an Abkari-officer of the commission of any offence, and of the intention or preparation to commit any offence under this Act which may come to their knowledge;

(*b*) to take all reasonable measures in their power to prevent the commission of any such offence which they may know or have reason to believe is about to be committed;

(*c*) to assist any Abkari-officer in carrying out the provisions of this Act.

Duty of landholders and others to give information.

[a] **39A.** Every owner or occupier of land and the agent of any such owner or occupier of land on which there shall be any manufacture of any excisable article not licensed under this Act, or the unlawful cultivation or collection of any plant from which an intoxicating drug can be produced, shall in the absence of reasonable excuse be bound to give notice of the same to a Magistrate or to an officer of the departments of Abkari, Police or Revenue immediately the same shall have come to his knowledge.

Issue of warrants.

40. Any Commissioner, or Collector, or other Abkari-officer duly empowered in this behalf, or a Magistrate, may issue a warrant—

(*a*) for the arrest of any person whom he has reason to believe to have committed an offence against this or any other law relating to Abkari-revenue for the time being in force, or

[a] Sections 39 and 39A were substituted for the original section 39 by Bom. XII of 1912, s. 23.

(*b*) for the search, whether by day or by night, of any building, vessel or place in which he has reason to believe that any [a] excisable article or hemp [a] is manufactured or sold, or that any toddy is drawn contrary to the provisions of this Act, or that any [a] excisable article or hemp [a] or other thing liable to confiscation under this or any other law for the time being in force relating to abkari-revenue is kept or concealed.

All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure, 1898, [b] by a Police-officer or by an Abkari-officer duly empowered in this behalf, or, if the officer issuing the warrant deems fit, by any other person.

Certain Abkari-officers to have powers of investigation.

[c] 41. (1) Every Abkari-officer not below such rank as Government may prescribe shall within the area for which he is appointed have power to investigate all offences punishable under this Act.

(2) Every such officer shall in the condoct of such investigation exercise the powers conferred by the Code of Criminal Procedure, 1898, upon an officer in charge of a police-station for the investigation of a cognizable offence :

Provided that—

(*i*) if such officer is of opinion that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of an accused to a Magistrate, or that the person arrested may be discharged with a warning, such officer shall release him on his executing a bond, with or without sureties, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence, and shall make a full report of the case to his official superior and be guided by the order which he shall receive on such report ;

[a—a] These words were substituted for the original words by Bom. XII of 1912, s. 24.

[b] The reference to Act X of 1872 is altered in accordance with Act V of 1898, s. 3.

[c] Sections 41, 41A, 41B and 41C were substituted for the original section 41 by Bom. XII of 1912, s. 25.

(*ii*) the powers of an officer empowered under this section shall be subject to such further modifications or restrictions as Government may prescribe.

Procedure on arrest.

[a] 41A. Every person arrested and things seized under section 36, 37 or 40 shall, unless the arrest or seizure has been made by an Abkari officer exercising powers under section 41, be forwarded without delay to the nearest Abkari-officer exercising such powers, or if there be no such officer within a reasonable distance, to the officer in charge of the nearest police-station.

Bail.

[a] 41B. (1) Any Abkari officer empowered to investigate an offence punishable under this Act shall have power to grant bail in accordance with the provisions of the Code of Criminal Procedure 1898 to any person arrested without a warrant for an offence punishable under this Act.

(2) When any person has been arrested under section 38A for a bailable offence punishable under the Indian Penal Code any Abkari officer empowered under sub-section (1) to grant bail shall have power to grant bail to such person in accordance with the provisions of the Code of Criminal Procedure, 1898.

Articles seized.

[b] 41C. When anything has been seized by an Abkari officer exercising powers under section 41 or has been sent to him in accordance with the provisions of section 41A, such officer, after such enquiry as may be necessary,—

(*a*) if it appears that such thing is required as evidence in the case of any person arrested,—shall forward it to the Magistrate to whom such person is forwarded or for his appearance before whom bail has been taken,

(*b*) if it appears that such thing is liable to confiscation but is not required as evidence as aforesaid,—shall send it with a full report of the particulars of the seizure to the Collector,

(*c*) if no offence appears to have been committed, shall return it to the person from whose possession it was taken.

[a] Sections 41, 41A, 41B and 41C were substituted for the original section 41 by Bom. XII of 1912, s. 23.

[b] Sections 41, 41A, 41B and 41C were substituted for the original section 41 by Bom. XII of 1912, s. 25.

Closing of shop for sake of public peace

42 It shall be lawful for the Collector by notice in writing to the licensee to require that any shop in which [a] any excisable article [a] is sold by retail shall be closed at such time as he may deem it necessary for the sake of public peace and order that such shop should remain closed

[b] If a riot or unlawful assembly is imminent or occurring [b] in the vicinity of any such shop, it shall be lawful for any Magistrate or Police officer who is present to require such shop to be kept closed for such period as he deems fit

X—PENALTIES

For illegal import &c

43 [c] (1) Whoever in contravention of this Act or of any rule or order made under this Act or of any license permit or pass obtained under this Act—

(*a*) imports, exports, transports or possesses any excisable article or hemp, or

(*b*) manufactures any excisable article, or

(*c*) cultivates or collects hemp, or

(*d*) taps any toddy producing tree, or

(*e*) draws toddy from any tree, or

(*f*) constructs or works any distillery or brewery, or

(*g*) bottles any foreign liquor, or

(*h*) uses, keeps or has in his possession any materials, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing any excisable article other than toddy, or

(*i*) sells any excisable article or hemp,

shall, on conviction, be punished for each such offence with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both

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[a—a] These words were substituted for the original words "liquor or any intoxicating drug" by Bom XII of 1912 s 26, cl (*a*)

[b—b] These words were substituted for the original words "in the event of the occurrence of a riot or unlawful assembly" by Bom. XII of 1912 s 26 cl (*b*)

[c] Sub-section (1) of section 43 was substituted for the original sub-section by Bom. XII of 1912 s, 27

Provided that when any person is convicted under this sub-section of any offence committed in respect to cocaine or any of the synthetics thereof, he shall be punished on first conviction with imprisonment for a term which may extend to one year, or with fine which may extend to two thousand rupees, or with both, and on any subsequent conviction with imprisonment for a term which may extend to two years or with fine which may extend to four thousand rupees, or with both

[*] (2) Whoever, in contravention of this Act or of any rule or order made under this Act or of any license, permit or pass granted under this Act, imports, exports collects, transports, sells, or has in his possession mhowra flowers shall be punished for each such offence with fine which may extend to five hundred rupees or with imprisonment which may extend to three months, or with both provided that no person shall be punished in respect of any mhowra flowers which are either growing on a tree or are lying uncollected on the ground as they have fallen from a tree

Transport of toddy—S 43 (a) —

The Accused Nagawa a girl of 16 years of age was driving a buffalo laden with toddy Her uncle held a pass for tapping toddy trees and carrying toddy to the shop He went away in search of a run away pony and asked the Accused to drive the buffalo The girl was prosecuted under S 43 (a) for transporting toddy without a pass and convicted and fined 8 annas Held that the girl should not have been considered as herself transporting toddy, seeing that her uncle who had but momentarily withdrawn might be deemed as still controlling the buffalo laden with it

Imp Vs Nagava Kom Kalappa Rat Un Cr C 306

Transport of Ganja S 43 (a) —

The Accused removed Ganja he had grown in one of his Survey numbers to a threshing floor in an adjoining Survey number for the purpose of preparing it The two Survey numbers belonged to him and was practically one field Held that the act of removal was not punishable under S 43 (a)

Imp Vs Satwabin Ranu Barhade Rat Un Cr C 465

Transport of liquor—S 43 (a) —

The Accused Jeria Sukhla was found in British Territory in possession of liquor whilst it was in the course of transmission from Ambeti to Barai two

[*] This Sub-section was added by Bom III of 1892 S 3

villages of the Dharampur State [illegible] plicant No 2 was illegal the Abkari Act. Held that the Accused [illegible] erely in his custody on liquor into British India [illegible] son in possession of

2 As the importing of liquor is not [illegible] as was pointed out another, there cannot be any offence of trans[illegible] *any distinction* another within Br India [illegible] *to be no reason* [illegible] *possession of*

Imp Vs Jerla Salt [illegible]

Importation of Bhang—S 43 (a) —

The Accused Raghunath Rao was charged with ha[illegible] *27—2—1925* into the Bombay Presidency, as a parcel containing [illegible] *amounts to* his name and address was received at Kalol a Railway St[illegible] State The Criminal jurisdiction over this Railway line [illegible] moved it the Government of India, but there had been no cessation of terr[illegible] he gate

Held that the Accused did not commit the offence of impo[illegible] erson Bombay Presidency i e into territories which formed part of [illegible] The and if the land upon which the offence was alleged to have been ce[illegible] ned, had not actually been ceded, it could not form part of Br India [illegible] o

Raghunath Rao 5 Bom L R 873

Import of liquor —S 43(a) —

The Accused was convicted by the Magistrate of Khandesh of illic[illegible] importation of liquor from foreign territory, and also of illegal possession of the same under S 43(a) and sentenced to pay a fine of Rs 20 for each offence

The District Magistrate referred the case as follows —It appears to me doubtful whether a person who has been convicted of one of the offences under S 43 as to the illicit import, transport, manufacture or sale of liquor, ought also to be convicted for the illegal possession of liquor The illegal possession is a necessary element of the offences under S 43 where the amount is above that allowed by the rules, and it ought not, in my opinion, to be treated as a separate offence

Held that a man who illegally imports liquor may keep it in his possession for sometime after he imports it The importation and possession in such a case would be distinct offences But in the present case, the importation seems to have involved the possession of which the Accused was convicted. We therefore reverse the sentence of Rs 20 passed for possession of liquor

Q E Vs Chand Valad Kitab 14 Bom 583.

Importation of Bhang from Wadhwan Civil Station—Whether punishable S 43(a)—

The Accused C was charged with having imported 20 tolas of Bhang from Wadhwan Civil Station into Viramgam, admittedly in British Territory,

under S 43 of the Act The Magistrate acquitted the Accused on the grou that Wadhwan Civil Station was not foreign territory

On appeal by Government, held that Wadhwan Civil Station like Rajk Civil Station is not a part of British India altho British Laws are in fo there, and British Courts and British officials are there and people lived to all intents and purposes under British Dominion, and that British Laws applied by a Special process and do not apply of themselves

Therefore the importation of 20 tolas of Bhang from Wadhwan Civil Station to Viramgam is an importation from foreign territory into the Presidency of Bombay and is therefore punishable under S 43

Emp Vs Chunilal Jagjivan 14 Bom L R 876=17 I C 534

Mohwra flowers found during transit in a prohibited place with the possession unlawful—S 43(a)

The Accused C M consigned certain Mohwra flowers partly at the Nadiad and partly at the Umreth Stations for conveyance to Nandod The Railway Company took possesion of these goods and in the course of the conveyance to Nandod, they were found at Ankleswar a place where they naturally would be in the course of their transport But Ankleswar was a place in a prescribed area within which even the possession of Mhowra flowers without a permit was unlawful The accused was charged and convicted for possessing Mohwra flowers without a permit under S 43 of the Abkari Act

Held on revision that the Accused was not guilty of the offence, and in the absence of evidence that he conspired with the Railway Company that these goods should be conveyed without a permit, he is not guilty of even abetting the offence.

Chunilal Manilal Vs Emp—(Bom) 16 Cr L J 212=27 I C 836

Master and servant Illicit possession and sale of liquor—Liability of servant—Ss 43 (a), 43 (1)

The Accused were convicted and sentenced to two months' rigorous imprisonment each by the City Magistrate, Karachi, under sections 43 (*a*) and 43 (1) of the Bombay Abkari Act V of 1878

The view which commended itself both to the City Magistrate and the learned Additional Judicial Commissioner is that both the accused were jointly interested in the liquor which was found both in shop No 11 and in shop No 12 and that the sale and possession by both applicants has been clearly established

Mr. Motiram contended on behalf of the applicant No 2 that since under section 27 of the Indian Penal Code the possession by a wife, clerk or servant

is possession of the master, conviction of the applicant No 2 was illegal inasmuch as the liquor in his so called possession was merely in his custody on behalf of the applicant No 1, his master, who was the person in possession of the same Held that *The Indian Penal Code*, however as was pointed out in the case reported in I L R 44 Cal 477, *does not draw any distinction between the custody and possession and there appears to us to be no reason why a court in India should not hold property was in the possession of both of the master and of the servant*

Tillo and another Vs Crown (Sind)—27—2—1925

Unauthorized possession of cocaine and handing it to another—whether amounts to transport—Ss 43 (b), 47

Accused No I who was in unlawful possession of cocaine removed it from his room and handed it to Accused No II who stood near the gate The latter carried it to some distance and then handed it to a third person All the accused were tried for transporting cocaine under S 43 (a). The Magistrate acquitted them so far as the charge under S 43 (a) was concerned, but convicted them for unlawful possession

On appeal the High Court held that the Magistrate rightly declined to convict them under S 43 (a) and that section seems to contemplate rather the case of a person who is in lawful possession of cocaine at one place, but is by law forbidden to remove it either partly or wholly to another place Here the offence consisted not in moving the cocaine from one place to another, but in the unauthorised possession of it at any place in contravention of the Act

Emp Vs Balavantrao Anantrao—12 Bom L R 124

Manufacture—Whether includes preparation by admixture—S 43 (b)—

The word "manufacture as used in S 3 (11) includes the preparation of a spirituous liquor by admixture and is not confined to processes which result in the production of Alcohol The making of Eau de cologne by mixing some essential oils to rectified spirit water which create fragrance is manufacture of liquor within the meaning of S 43 Cl (b)

Imp Vs Keshavanta Soma—Rat Un Cr C 834

S 43 (b)—

The process of manufacturing intoxicating drugs in S 43 Cl (b) does not include mere cultivation of Ganja plants

The word "sell in S 43 does not include "Exchange The Abkari Act is a Penal statute and should not be strained in its interpretation against the subject

Dadu Bin Appaji—Rat Un. Cr C 4.

Conviction for possession of utensils and manufacture of liquor—Legality—S 43 (b) (h) —

The Accused was convicted under S 43 (b) of the Bombay Abkari Act for the manufacture of liquor and (2) under S 43 (h) for being in possession of utensils for the manufacture of liquor He was sentenced separately for each of these offences Held that the second offence was included in the former and they were not distinct offences The conviction under S 43 (h) reversed

Emp Vs Bhava Sardar—1 Bom L R 344

Abetment—Selling Mhowra flowers—S 43 (b) —

Except in the area in which Bombay Act III of 1892 is in force, it is no offence to sell Mhowra flowers without a permit Therefore the mere fact of such a sale to persons who were convicted of illicit distillation is not in itself sufficient to justify a conviction for abetment of the offence of manufacturing liquor referred to in S 43 (b)

Imp Vs Sh k Chand—Rat Un Cr C 949

Sentence—S 43 (c) —

The Accused was convicted for an offence under S 43 (c) of the Abkari Act V of 1878 and sentenced to pay a fine of Rs 75 or, in default to suffer 3 M R I Held that the sentence of 3 M R I passed in default of payment of fine was illegal under S 65 I P C as the maximum term of imprisonment fixed for the offence was six months The sentence of 3 M R I was altered to 6 weeks R I

Imp Vs Bh karobin Lakshman—Rat Un Cr C 979

Finding of 3 Ganja plants—Inference—S 43 (c) —

Three Ganja plants were found growing in the compound of the Accused There was no proof that he had cultivated them Held he could not be convicted of an offence under 43 (c) of the Abkari Act as from the mere finding it could not be inferred that he cultivated them The inference which might be justifiable if a large number of plants were found, did not arise from the existence of 3 plants alone

Imam—4 Bom L R 98

S 43 (d) —

When a Magistrate convicts an Accused person under S 43 (d) of the Bombay Abkari Act there is no provision in the Act to order the payment by him of any fee that may be leviable in respect of trees tapped by him without license

Imp Vs R B Patel—Rat Un Cr C 535

Possession of implements for drawing toddy—S 43 Cl (h) —

The Accused was charged with the offence of keeping in his possession implements for the purpose of drawing toddy, and convicted by the 2nd Class Magistrate of Olpad and sentenced to a fine of Rs 8

On reference by the District Magistrate of Surat, held that drawing toddy is not manufacturing liquor as defined in Cl 11 of S 3, for it will be observed in S 43, the drawing of toddy and manufacturing liquor are treated separately Therefore the mere possession of implements for the purpose of drawing toddy is not an offence punishable under Cl (h) of S 43 Conviction reversed and fine refunded

Q E Vs Pirio Kalio—18 Bom 428

Possession of implements—Evidence of intention—S 43 (h) —

For a conviction under S 43 (h) of the Act, it is not enough to prove merely that the still or apparatus with the Accused is one which can be used for manufacturing liquor or an intoxicating drug It must also be proved that be bad the apparatus in his possession for that purpose

Imp Vs Mukund Gopal—Rat Un Cr C 510

Possession of implements—Liability of head of the hous —S 43 (h) —

When apparatus for the manufacture of liquor is found in a house, the question as to who should be proceeded against for the offence is one of fact It cannot be decided by the principle of Civil responsibility that the head of the house is responsible It is obviously possible in any family that a son may contravene the provisions of the Abkari Act, while the father may be absolutely innocent and yet the materials for illicit manufacture may be found in a room of the house of which he is the head and he is actually living in

See also 9 B 556 *Imp Vs Dhamo Bapu—Rat Un Cr C 504*

Secret possession and sale of Cocaine—Deterrent sentences whether necessary — S 43 (i) —

Accused De Silva was convicted and fined by the Magistrate for secret possession and sale of Cocaine Held that such cases where cocaine is found to have been secretly possessed and sold without a license, must be dealt with so as to produce a deterrent effect It is necessary in such cases for Magistrates to pass sentences of imprisonment as a mere sentence of fine fails to check the evil of illicit sale and possession of cocaine

Emp Vs Roger De Silva—13 Bom L R 1185=12 I C 980

Sale of liquor by Servant—S 43 (i) —

Where the servant of a license holder under the Abkari Act sold liquor at rates other than those specified in the license, held he was guilty of an offence under S 43 cl (i) of the Act

Referred to in 8 Bom L R 947. *Franji—2 Bom LR 663.*

Sale of liquor by servant of licensee—S. 43 (1)—

The penalty prescribed by S. 43 (1) of the Bombay Abkari Act 1878 attaches to the servant of a licensee who sells liquor without a permit from the Collector and at rates not specified.

R. v. Sitaram Kashi—I. L. R. 7 Bom. 746.

Transfer of Ganja from one shop to another—S. 43 (1)—

A transfer of Ganja from one shop to another both shops belonging to the same licensee does not constitute a sale and therefore does not constitute an offence under S. 43 (1).

Imperatrix v. Mahadeo Bhikaji—I. L. R. 5 Bom. 214—R. v. Ganesh—I. L. R. 7 Bom. 746—Cr. C. 214.

Selling liquor without a licence—S. 43 (1)—

The Abkari Act provides that any person who sells liquor without a licence or in contravention of the conditions of a licence commits an offence. The licence in this case provides that the sale of liquor must be by the Licence holder or by a servant of his approved by the Collector and a name is endorsed on the licence. The accused in the case presumed to be but was not a servant approved by the Collector and on such pretence sold liquor in his master's shop. Held he was rightly convicted under S. 43 (1) as it did not matter whether he sold without a licence or in contravention of the terms of the licence.

Queen-Empress v. Ganesh—I. L. R. 7 Bom. 746—I. C. 776.

Separate convictions for possession of apparatus and material—Legislation—S. 43 (2)—

The Accused were found in possession of (1) apparatus for manufacturing liquor and (2) material for Mhowra flowers for the same purpose. They held no permits. Held that the possession of both is one transaction and there can be no separate convictions for the possession of distinct material.

Lakshman—R. v. Cr. C. 670.

Separate convictions for possession of apparatus and material for manufacture—Legislation—S. 43 (1) and (b)—

The Accused was charged with (1) manufacturing country liquor from Mhowra flower and (2) being in possession of cooked Mhowra flowers and apparatus for the purpose of manufacturing liquor from them. He was convicted and sentenced separately for each of the offences under clauses (b) and (b). Held that the Accused could under the circumstances only be convicted for the offence of manufacturing country liquor from Mhowra flowers.

R. v. Bhikaji—4 Bom. L. R. 720.

S 43 —

A license granted to one Gane h provided that toddy drawn should be taken to the shop or distillery by a specified route There was no obligation imposed by the license to take the toddy at once Held that when he keeps the toddy at the place where it was drawn, for some days and does not at once convey it to the shop or distillery, he commits no breach of the conditions of his license.

Ganesh—Rat Un Cr. C. 552.

S 43 —

In a prosecution under the Bombay Abkari Act V of 1878, the report of a Distillery Inspector that certain liquor is illicit is not admissable in evidence. There must be independent evidence to prove that it is illicit

Mohun Lal Khushal—Rat Un Cr C 298.

Licensee entering into partnership—Legality—S 43

G obtained a license to sell liquor under the provisions of the Bombay Abkari Act Condition No 19 of the license was that he would not sell, transfer or sub let his right to sell country liquor However he subsequently joined K as a partner in the business K worked for sometime and filed a suit against G for an account of what was due upon the partnership

Held that the contract of partnership was not forbidden by law, or opposed to the policy and general tenor of the Excise Act

Held further, that the omission of all reference to the question of sub-letting a part of the right to vend or of admitting partners into the business in the form of license sanctioned in the year 1903 by Government, points to the inference that the Abkari authorities have decided not to prohibit the taking in of other persons into partnership in the profits derived from the selling of liquor under an Abkari License

K S Patil Vs G S Patil—37 B 320=19 I C 442.

Penalty for the keeping or letting of premises for a certain offence.

[*] 43A Whoever lets or uses any house, room or place, of which he is the owner or occupier or of which he has the use, in such circumstances as to indicate that he knows or has reason to believe that such house, room or place is used as a resort of importers, exporters, transporters, possessors or vendors of cocaine or any of the synthetics thereof in contravention of any of the provisions of this Act shall be punished on first conviction with imprisonment for a

[a] Sections 43A and 43B were inserted by Bom III of 1917, s 3

term which may extend to one year or [illegible] which may extend to two thousand rupees or with both [illegible] subsequent offence with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both.

Security for abstaining from committing offence.

[illegible]. (1) Whenever any person accused of any offence under this Act is convicted by the trial of such offence before a High Court, a Court of Sessions or the Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class and such Court is of opinion that it is necessary to require such person to execute a bond for abstaining from committing any offence under this Act, it may pass order to the effect aforesaid in addition to any other punishment or order that it may lawfully pass on such conviction, and may also require him to give security to the satisfaction of such Court for payment of such compensation as may be awarded under section [illegible] and for payment of any sum of money which may be adjudged as the costs of any proceedings under such section, and such Court may require such security for a period not exceeding three years as it thinks fit to fix.

(2) If the conviction is not set aside on appeal or revision, the bond so executed shall [illegible].

(3) An order under this section [illegible] may be made by an Appellate Court or by the High Court when exercising the powers of revision.

(4) The provisions of sub-section (1) to the extent of any order under this section shall be regulated as nearly as may be by the provisions of sections 122, 123, 124, 125 and 126 of the Code of Criminal Procedure, 1898, as if such order had been made under section 106 of the said Code, and the provisions of sections 513, 514 and 515 of the said Code shall so far as may be applied to bonds executed under this section.

For neglect to keep [illegible], &c.

44. Whenever in contravention of this Act, or of any rule or order made under this Act, or of any licence, permit or pass obtained under this Act—

[illegible]

(*a*) neglects to supply himself with measures [a] and weights [a] for measuring [a] and weighing [a] [b] any excisable article [b] or with instruments for testing the strength of liquor, or to keep the same in good condition, or

(*b*) refuses to measure, [c] weigh or test [d] any excisable article [d] in his possession,

shall be punished for each such offence with fine which may extend to two hundred rupees.

Hydrometre—Failure to keep—S. 44 (a) —

The failure to keep a Hydrometre is made an offence under S 44 (a) of the Bombay Abkari Act

In re Gangaram—Rat. Un Cr. C. 617.

For misconduct by licensees, &c

45. Whoever, being the holder of a license, permit or pass granted under this Act [e] or a person in the employ of such holder or acting with his express or implied permission on his behalf [e]—

(*a*) fails to produce such license, permit or pass on the demand of any [f] duly empowered officer either of the Abkari Department or of any of the departments named in section 39 if such license, permit or pass is in his possession or control [f], or

(*b*) wilfully does, or omits to do, anything in contravention of any rules or orders made under this Act, or

(*c*) [g] wilfully does, or omits to do, anything [g] in breach of any of the conditions of [h] such license, permit or pass [h] not otherwise provided for in this Act [i]

[a—a] These words were inserted by Bom XII of 1912, s 28, cl (*a*)

[b—b] These words were substituted for the original word "liquor" by Bom XII of 1912, s 28, cl (*a*)

[c] The word "weigh" was inserted by Bom VII of 1912, s 28, cl (*b*)

[d—d] These words were substituted for the original words "the strength or quality of any liquor" by Bom XII of 1912, s 28, cl (*b*)

[e—e] These words were inserted by Bom XII of 1912, s 29, cl (*a*)

[f—f] These words were substituted for the original words by Bom XII of 1912, s 29, cl (*b*)

[g—g] These words were substituted for the original words "commits any act" by Bom IV of 1905 first schedule

[h—h] These words were substituted for the original words "his license" by Bom. XII of 1912, s 29 cl (*c*)

[i] Clauses (*d*) (*e*), (*f*) and (*g*) and the word "or" at the end of clause (*c*) repealed by Bom. XII of 1912, s. 29 cl (*d*), are omitted.

[a] shall, on conviction before a Magistrate, be punished for each such offence with imprisonment which may extend to three months or with fine which may extend to two hundred rupees or with both [a]

S 45 —

The license granted to the Licensee provided that the licensee should deliver the juice of the trees drawn to the farmer He was convicted of having broken the conditions of his license, as he delivered the juice to a servant of the farmer who came for it on behalf of the farmer and as his agent Held that the conviction was bad since under the terms of the license, delivery to the farmer in person was not essential, but that the latter could depute a servant or agent to take delivery of the juice

Imp Vs Shapurji Ratanji—Cr Ruling 17 of 1895

Breach of license by servant—S 45 (c) —

A license holder for the sale of country liquor was convicted of a breach of his license because his servant a liquor shop keeper had given short measure to a customer It was proved that he had taken all reasonable precautions such as reasonable men would use to prevent the commission of such offences by his servants Held that the conviction should be reversed

Imp Vs Dadabhoy Hormusji—Cr Rg 15 of 7—3—1894

Omission to keep true accounts—S 45 (c)

The omission to keep true accounts is a breach of the conditions of the license and is an offence punishable under S 45 (c) The receipt of liquor into shops without keeping true accounts is an act in breach of such conditions

J B Mascrenhas—6 Bom L R 253

Sub letting of contract—License Rule 20—S 45 (c) —

The Accused agreed with the complainant to allow his name to be used as a contractor from Government, for two shops for the sale of country liquor The funds for the contract proceeded from the complainant, and the Accused was to be paid a certain sum by the complainant for allowing his name to be used The contract was knocked down to the Accused, and the licenses were issued in his name One of the conditions of the licenses was as follows — "The licensee shall not sell, transfer, or sub let his right of sale of country spirits under this license, nor enter into any agreement in connection with the exercise of the said right, which, in the opinion of the Collector, is in the nature of sub lease" The shops remained in the complainant's possession

[a—a] These words were substituted for the original words by Bom XII of 1912 s 29, cl (c)

and were managed by him. On these facts, the Accused was proceeded against under S. 45 (c) of the Act for the breach of a condition in the license. It was contended on behalf of the Accused that the right of sale conferred by the license had been obtained through him as a benamidar (and not from him as a person who had acquired that right for himself), and that, therefore, the offence charged had not been committed Held negativing the contention, that though by supplying the necessary funds, a person other than the licensee named in the license, might acquire a beneficial interest in the proceeds or profits of sales, he could not by so supplying funds, acquire the right of sale through the licensee named—such right being conferred by virtue of the Act only upon the person named, and that the person named in the license could not set up as a defence that another person had acquired the right of sale through him as an agent or benamidar—instead of from him as the person who had that right in himself.

Mahadevappa Basappa Udapudi—8 Bom L.R. 990=5 Cr L.J. 10.

Penalty for offences not otherwise provided for

[a] **45A.** Whoever is guilty of any act or intentional omission in contravention of any of the provisions of this Act, or of any rule or order made under this Act, and not otherwise provided for in this Act, shall on conviction before a Magistrate be punished for each such act or omission with fine which may extend to two hundred rupees

For misconduct by licensed vender or manufacturer

46. [b] Whoever, being the holder of a license for the sale or manufacture of any excisable article under this Act, or a person in the employ of such holder or acting with his express or implied permission in his behalf [b]

(*a*) mixes or permits to be mixed with the[ ] excisable article[c] sold or manufactured by him any noxious drug or any foreign ingredient likely to add to its actual or apparent intoxicating quality or strength, or any article prohibited by any rule made under [d] clause (*f*) (*i*) of section 35A, [ ] [ ] or water except the purpose of reducing liquor to the strength prescribed in the license, or any diluting or colouring substance or any ingredient whatsoever likely to render the excisable article inferior in quality whether such ingredient is or

[a] Section 45A was inserted by Bom XII of 1912 s 32.

[b—b] These words were substituted for the original words by Bom XII of 1912, s 31, cl (a)

[c—c] These words were substituted for the original words "liquor or intoxicating drug" by Bom XII of 1912, s 31, cl. (b) (i)

[d—d] This phrase was substituted for the original phrase "section 35, clause (h)" by Bom XII of 1912, s. 31, cl (b) (ii)

is not prohibited as aforesaid [a] when such admixture shall not amount to the offence of adulteration under section 272 of the Indian Penal Code, or

(*b*) sells or keeps, or exposes for sale, as [b] foreign liquor, which he knows or has reason to believe to be country liquor, or

(*c*) marks the cork of any bottle, or any bottle, case, package or other receptacle, containing country-liquor, or use any bottle, case, package or other receptacle containing country-liquor, with any mark thereon or on the cork thereof with the intention of causing it to be believed that such bottle, case, package or other receptacle contains [c] foreign liquor, when such act shall not amount to the offence of using a false trade mark with intent to deceive or injure any person under section 482 of the Indian Penal Code, or

(*d*) sells or keeps or exposes for sale, any country-liquor in a bottle, case, package or other receptacle with any mark thereon or on the cork thereof with the intention of causing it to be believed that such bottle, case, package or other receptacle contains [c] foreign liquor, when such act shall not amount to the offence of selling goods marked with a counterfeit trade-mark under section 486 of the Indian Penal Code,

[d] or (*e*) sells any excisable article which is not of the nature, substance and quality demanded by the purchaser or keeps or exposes for sale any excisable article which is not of the nature, substance and quality authorized by the terms of the license to be kept for sale by the holder of the license,

shall be punished for each such offence with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to three months, or with both

Liability of licensee for acts of servants

[e] **47.** The holder of a license, permit or pass under this Act shall be responsible, as well as the actual offender, for any offence committed by any person in his employ or acting with his express

[a—a] These words were inserted by Bom XII of 1912, s 31 cl (*b*) (*iii*)
[b] The words 'European or' repealed by Bom XII of 1912 s 31 cl (*c*) are omitted
[c] The words 'European or' repealed by Bom XII of 1912 s 31 cl (*c*), are omitted
[d] Clause (*e*) was inserted by Bom XII of 1912 s 31, cl. (*d*)
[e] Section 47 was substituted for the original section by Bom XII of 1912, s 32

or implied permission in his behalf under section 43, 44, 45, 45A or 46 as if he himself had committed the same, unless he shall establish that all due and reasonable precautions were exercised by him to prevent the commission of such offence

provided that no person other than the actual offender shall be punished with imprisonment except in default of payment of fine.

Liability of master for servants offences—S 47 —

A license holder under the Bombay Abkari Act V of 1878 can be held criminally liable for the act of his servant, under S 47 only when such an act, if committed by the master would have been a breach of the conditions of the license (Birdwood J)

The 2nd para of S 47 applies only to acts which would be offences under Ss 43, 44, 45 or 46, if done by a person when actually in the employ of or acting on behalf of a holder of a license pass or permit (Parsons, J)

Emp Vs Virbaiji Jivaji and another—Rat Un Cr C 542

Mens Rea—Master s liability—S 47 —

The principle with regard to the Abkari Act, 1878, is that licenses to keep shops are only granted to persons of good personal character, and it is obvious that the object of so restricting the grant of licenses would be defeated, if the licensed person could, by delegating the control and management of the house to another person who was altogether unfit to keep it, free himself from responsibility for the manner in which the shop was conducted *Mens Rea* is not required where the acts prohibited by a Statute are not criminal in any sense, but are prohibited in the public interest under a penalty This principle is substantially adopted in S 47 of the Abkari Act with the exception, that it is open to the licen e holder according to the Section to prove facts to show that he is not liable for his servants defaults or acts

Waman Dhanraj—10 Bom L.R 171

48 Whoever maliciously gives false information that any person has committed, or been concerned in any offence, against this Act, with the intent that such person be arrested, or that any building, vessel or other place be searched to the injury or annoyance of such person or of any other person, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both

For maliciously giving false information

For vexatious search or arrest

49. Any Abkari or other officer who, without reasonable ground of suspicion, enters or searches, or causes to be searched, any building, vessel or place,

or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for anything liable to confiscation under this Act,

or vexatiously and unnecessarily detains, searches or arrests any person,

shall, for every such offence, be punished with fine which may extend to five hundred rupees

Failure of Abkari officer in duty

[a] Any Abkari-officer who without lawful excuse shall cease or refuse to perform, or shall withdraw himself from, the duties of his office, unless with the express written permission of the Commissioner, or unless he shall have given to his superior officer two months' notice in writing of his intention to do so, or who shall be guilty of cowardice, shall on conviction before a Magistrate be punished with imprisonment which may extend to three months, or with fine which may extend to three months' pay, or with both

Vexatious delay in forwarding to a Magistrate a person arrested under section 38A

[b] **50.** Any Abkari or other officer or person who vexatiously and unnecessarily delays forwarding to a Magistrate or to the officer in charge of a police-station as required by section 38B any person arrested under section 38A shall be punished with fine which may extend to two hundred rupees

Vexatious delay in acting in the manner required by section 41A or 41C

[b] **50A.** Any Abkari or other officer or person who vexatiously and unnecessarily delays acting in the manner required by section 41A or 41C with respect to any person arrested, or any illicit article seized under this Act, shall be punished with fine which may extend to two hundred rupees

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[a] Section 49A was inserted by Bom XII of 1912 s 33

[b] Sections 50 and 50A were substituted for the original section 50 by Bom XII of 1912, s 34

For conniving at escape of persons arrested &c

51 Any Abkari or other officer who unlawfully releases or connives at the escape of any person arrested under this Act, or connives at the commission of any offence against this Act, or

acts in any manner inconsistent with his duty for the purpose of enabling any person to do anything whereby any of the provisions of this Act may be evaded or broken, or the Abkari revenue defrauded,

and any officer [a] named in section 39 invested with local jurisdiction who connives at the commission of any offence against this Act in any place within his jurisdiction,

shall, for every such offence, be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both

For neglect of to assist an Abkari officer

52 Any officer [b] named in section 39 who, without lawful excuse, neglects or refuses to [c] give information or to take preventive measures or to give assistance to an Abkari officer in the manner required by the said section [c] shall be punished with fine which may extend to five hundred rupees

Presumption as to commission of offence in certain cases.

53 In prosecutions under section 43 [d] it shall be presumed [e] without further evidence [e] until the contrary is proved, that the accused person has committed an offence under [f] that section [f] in respect of [g] any excisable article or hemp [g] or any still, utensil,

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[a] The words "or any other department" repealed by Bom XII of 1912 s 34A, are omitted

[b] The words "of any of the departments" repealed by Bom. XII of 1912 s 35, are omitted

[c—c] These words were substituted for the original words by Bom. XII of 1912 s. 35

[d] The words "or section 4" repealed by Bom XII of 1912 s 36 cl (a), are omitted.

[e—e] These words were inserted by Bom. XII of 1912 s 36, cl (b)

[f—f] These words were substituted for the original words "those sections" by Bom XII of 1912 s 36 cl (c)

[g—g] These words were inserted for the original words "any liquor or hemp or intoxicating drug" by Bom XII of 1912 s 36, c (d).

implement or apparatus whatsoever for the manufacture of [a] any excisable article [a] [b] or mhowra flowers, [b] or any such materials as are ordinarily used in the manufacture of [a] any excisable article [a] for the possession of which he is unable to account satisfactorily [c]

Possession of utensils—Explanation for possession—S 53 —

The Accused was a distiller of spirits in the Native State of Dharampur His license to follow that occupation having expired, he removed the copper utensils used in his trade and was going to sell them at Bulsar On his way he informed the Police Patel of Kosam Kuva a village in British Territory that he had such utensils and was going to sell them The Police however came to his house and took away the utensils and prosecuted him under S 43 The 2nd Class Magistrate of Bulsar convicted him and sentenced him to pay a fine of Rs 30 or in default to suffer 1 M R I

On revision, held, that the Accused satisfactorily accounted for his possession of the utensils and the presumption which would otherwise arise under S 53 does not arise It does not seem that the mere possession, without a license, of such utensils is an offence punishable under S 43 It is only in cases where such possession is not satisfactorily accounted for that under S 53, it is to be presumed, until the contrary is proved that the Accused person has committed an offence under S 43 Conviction and sentence are reversed.

Q E Vs Pestonji Barjorji—9 Bom 456

Possession of Mhowra flowers by a dealer—Presumption—S 53 —

The petitioner was a dealer in Mhowra flowers and in the course of his business sold some flowers to one K who distilled liquor therefrom, and was tried and punished for the offence On enquiry by the Police as to the person from whom K obtained the flowers, he pointed out the petitioner The Police searched the house of the petitioner and found in it some maunds of Mhowra flowers The petitioner was charged under S 43 with the offence of keeping Mhowra flowers in his possession for illicit distillation and was convicted and sentenced to pay a fine of Rs 30

Held on revision that in prosecutions under S 43, a presumption under S 53 no doubt arises that the person found in possession of such materials "as are ordinarily used in the manufacture of liquor was, in possession of them for the purpose of manufacturing liquor (S 43 Cl H) But such a presumption

[a—a] These words were substituted for the original words by Bom XII of 1912 s 36 cl (e)

[b—b] These words were inserted in section 53 by Bom III of 1892 s 4

[c] The second paragraph of section 53 repealed by Bom XII of 1912 s 36 cl (f) is omitted

arises only when the Accused is unable to account satisfactorily for his possession of them In the present case, it appears that the Accused is a dealer in Mhowra flowers, and the only act found against him is that of having sold the Mhowra flowers to K who made an illegal use of them It is not alleged that he has used such flowers for the purpose of manufacturing liquor Being a dealer, his possession of Mhowra flowers, in the course of his business is satisfactorily accounted for The presumption therefore under S 53 cannot be said to arise in this case The Accused cannot be held responsible for the use made by purchasers of the materials after they have passed from his control The conviction and sentence are reversed

In re Limda Koya—9 Bom 556

Possession of illicit liquor—Exceeding strength—Presumption—S 53 —

The Accused was found in possession of 44 bottles of country liquor, exceeding in strength the liquor usually sold in the District He was unable to account satisfactorily for the possession of the excess liquor He was therefore prosecuted for manufacture of and also for possession of liquor, convicted under both the sections and sentenced to 6 M R.I and a fine of Rs 200 On appeal the convictions were up held but the term of imprisonment was reduced to 3 months

Held on revision that the conviction for manufacture was bad If the facts had shown that the Accused had manufactured toddy or been in possession of a still, or had transported toddy from one place to another, then the Magistrate would have rightly presumed such manufacture or transport illegal Here the sole fact is that the Accused was in possession of the liquor without being able to account for its possession and the sole presumption that arises from that fact under S 53 is that the possession not properly accounted for, is illegal This constitutes only one offence The conviction for manufacture of liquor reversed

Q E Vs Byramji Khursedji—14 Bom 93.

Things liable to confiscation

[a] 54 Whenever an offence under this Act has been committed,

(*a*) any excisable article, hemp, mhowra flowers, materials, still, utensil, implement or apparatus in respect of which the offence has been committed ,

(*b*) any excisable article, hemp or mhowra flowers lawfully imported, transported, manufactured, had in possession or sold along with, or in addition to, any article liable to confiscation under clause (*a*) ,

[a] Sections 54 55 and 55A were substituted for the original section 54 and 55 by Act of 1912 s. 3

XI.—PROCEDURE.

Cognizance of offences.

56. All offences against this Act shall be cognizable by a Magistrate.

Conviction under Abkari Act—Appellate Court convicting under Land Revenue Code—Validity of convictions—Ss. 56—60 —

The Accused M was convicted by a 2nd Class Magistrate of the offence of a breach of license under Act V of *1878* and fined *Rs 10. The First Class* Magistrate, in appeal, under S 60 of the Act, and S 209 of the Bombay Land Revenue Code, enhanced the fine to 100 Rs.

Held that S. 60 of the Abkari Act did not apply; the Accused was convicted by a Magistrate under S 56 of the Act, and in appeal, the First Class Magistrate, could not make an order under S. 209, Land Revenue Code.

Miya Sab Valad Mahomed Sab—Rat. Un. Cr. C. 254.

57. [*Repealed by Bombay Act III of* 1886.]

58, 58A and **59,** [*Repealed by Bombay Act XII of* 1912.]

Appeals

60. All orders passed by any Abkari-officer other than the Collector or Commissioner under this Act shall be appealable to the Collector at any time within sixty days from the date of the order complained of

All orders passed by a Collector or Commissioner shall be appealable to the Commissioner or to Government, respectively, at any time within ninety days from the date of the order complained of :

provided that no appeal shall lie against an order passed by a Commissioner on appeal.

Subject to the foregoing provisions, the rules for the time being in force relating to appeals in the Revenue Department shall apply to appeals under this Act.

XII.—MISCELLANEOUS.

Saving of certain Acts

61. Nothing in this Act affects the Cantonments Act, 1910, [a] [b] or any enactment passed by the Governor General in Council since the 16th November 1861, the date on which the Indian Councils Act came into force.

[a] The reference to Act XVIII of 1853 and Bom III of 1867 is altered in accordance with Act XIII of 1889, s 2 Act XIII of 1889 has been repealed by Act XV of 1910 and the reference accordingly altered

[b] Words repealed by Bom XII of 1912, s 39 are omitted

Exception of medicated articles

62 Nothing in the foregoing provisions of this Act applies to the manufacture, sale or supply of any *bona fide* medicated article for medicinal purposes by medical practitioners, chemists, druggists apothecaries or keepers of dispensaries , but it shall be lawful for Government at any time, by notification in the *Bombay Government Gazette*, to prohibit the sale of any such article [ ] or class of such article [a] within any defined local area or place [b] or generally [b] except under a license from the Collector, which shall be granted on payment of such fees and subject to such conditions as Government may deem fit to prescribe.

Cocaine—S 62 —

' Cocaine does not come within the term ' Medicated article ' as used in S 62 (Act V of 1878) Cocaine is a medicine per se The expression ' Medicated article used in S 62 applies to something which is manufactured and by which manufacture is imbued with certain medicinal properties

Imp Vs James bi C Camo—27 Bom 551

Annual payment to Bombay Municipal Corporation in lieu of money received under Bombay Act IX of 1867

63 Whereas it was provided by section 14 of Bombay Act IX of 1867 [ ] that all money realized, collected or obtained, by the issue of licenses, or by forfeitures or by imposition or infliction of fines and penalties under the said Act should be carried to the credit of the municipal fund of the City of Bombay for municipal purposes, it is hereby enacted that, in lieu of the money hitherto so received by the Municipal Corporation of the City of Bombay, a fixed sum of Rs 1 43 750 shall from and after the first day of August, 1878 be annually paid by Government to the said Corporation for the said purposes

[1] Publication of rules.

64 All rules made under any power conferred by this Act shall be published in the *Bombay Government Gazette* and on such publication shall have effect as if enacted in this Act

Bar of action

67. No action shall lie against Government or against any Abkari-officer for damages in any Civil Court for any act *bona-fide* done or ordered to be done by them in pursuance of this Act, or of any law at the time in force relating to abkari revenue,

and all prosecutions of any Abkari-officer, and all actions which may be lawfully brought against Government or against any Abkari-officer, in respect of anything done, or alleged to have been done, in pursuance of this Act, shall be instituted within four months from the date of the act complained of and not afterwards,

and any such action shall be dismissed—

(*a*) if the plaintiff does not prove that, previously to bringing such action, he has presented all such appeals allowed by this Act, or by any other law for the time being in force, as within the aforesaid period of four months it was possible to present or,

(*b*) in the case of an action for damages, if tender of sufficient amends shall have been made before the action was brought, or if after the institution of the action a sufficient sum of money is paid into Court with costs, by or on behalf of the defendant

provided that nothing in this section shall be deemed to affect the power or jurisdiction of Her Majesty's High Court of Judicature or of the Court of Small Causes at Bombay

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SCHEDULE.

[*Enactments repealed*]

Repealed by Act XVI of 1895

BENGAL ACT NO. V OF 1909.

THE BENGAL EXCISE ACT, 1909

[As modified up to the 1st December 1914.]

67. No action shall lie against Government or Abkari-officer for damages in any for any act *bona-fide* done or done by them in pursuance of this Act, or of any la force relating to abkari-revenue ;

Bar of action

and all prosecutions of any Abkari-officer, and may be lawfully brought against Government or a officer, in respect of anything done, or alleged to pursuance of this Act, shall be instituted the date of the act complained of and not

and any such action shall be dismisse

(*a*) if the plaintiff does not prove tl such action, he has presented all such app or by any other law for the time being in f said period of four months it was possible

(*b*) in the case of an action for da amends shall have been made before after the institution of the action a s into Court with costs, by or on behal

provided that nothing in this s

THE BENGAL ACT V OF 1909.

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[1][(1A) "Bengal" means the Presidency of Fort William in Bengal.]

* * * * * *

(3) to "bottle" means to transfer liquor from a cask or other vessel to a bottle or other receptacle for the purpose of sale, whether any process of rectification be employed or not; and includes re-bottling;

(4) "Calcutta district" means—

(*a*) the area within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal,

(*b*) the Suburbs of Calcutta, as for the time being defined by notification published under section 1 of the Calcutta Suburban Police Act, 1866, and the Municipalities of Howrah and Bally, or such part of those areas as the Local Government may, by notification, direct, or, if the Local Government by notification so directs, no part of any of those areas, and

(*c*) any other areas, in the vicinity of those referred to in sub-clauses (*a*) and (*b*), which the Local Government may, by notification[3], declare to be included in the "Calcutta district";

[4][(4A) "cocaine" includes—

(*i*) coca leaves,

(*ii*) alkaloids of coca,

(*iii*) every drink or substance prepared from the coca plant (*Erythroxylum coca*,)

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1 This clause (*1A*) was inserted by the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914) s 6 (*1*)

2 Clause (*2*) of section 2 was repealed by the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914), s 5 (*a*) and is omitted

3 For a notification issued under s 2 (*4*) (*c*), see the Bengal Local Statutory Rules and Orders, 1912, Vol I, Pt VI, p 723

4 Clause (*4A*) was inserted by the Bengal Excise (Amendment) Act, 1914 (Ben Act VII of 1914), s 6 (*2*)

(*iv*) every drug, synthetic or other, having a like physiological effect to that of cocaine, and

(*v*) every preparation or admixture of any article hereinbefore mentioned,]

(5) "Collector" means—

(*i*) in the Calcutta district, the person appointed under section 7, clause (*b*), to exercise all the powers and to perform all the duties of the Collector in that district, and

(*ii*) elsewhere, the chief officer in charge of the revenue administration of a district,

[1][(6) "denaturant" means any substance prescribed by rule made in this behalf under clause (3) of section 86, for admixture with spirit in order to render the mixture unfit for human consumption, whether as a beverage, or internally as a medicine, or in any other way whatsoever,

[1](6*a*) to "denature" means to mix spirit with one or more denaturants in such manner as may be prescribed by rule made in this behalf under clause (3) of section 86, and "denatured spirit" means spirit so mixed,]

(7) "excisable article" means any liquor or intoxicating drug as defined by or under this Act,

(8) "Excise Commissioner" means the officer appointed under section 7, clause (*a*),

(9) "Excise Officer" means the Collector or any officer or other person appointed or invested with powers under section 7,

(10) "excise revenue" means revenue derived or derivable from any duty, fee, tax, payment (other than a fine imposed by a Criminal Court) or confiscation imposed or ordered under this Act or any other law for the time being in force relating to liquor or intoxicating drugs

(11) "export" means to take out of Bengal,

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[1] These clauses (6) and (6*a*) were inserted for the purpose of clause (4) of the Bengal Excise (Amendment) Act, 1910 (Bengal Act I of 1910).

(12) "import" means to bring into Bengal,

(13) "intoxicating drug" means—

(i) *ganja*, *bhang* or *sidhi*, *charas* and every preparation of the hemp plant (*Cannabis sativa*),

(ii) every admixture of, and every [1] drink made from, any article referred to in sub clause (i) of this clause, [2]

[3][(iia) cocaine, and]

(iii) any other [1] drink or substance which the Local Government may specify in this behalf by notification[4], with every preparation or admixture of the same,

but does not include opium or anything which is included in "opium" as defined in the Opium Act, 1878,

(14) "liquor" means[5] [liquid consisting of or containing alcohol,] and includes spirits of wine, spirit, wine, *tari*, *pachwai*, beer, [6] and any substance which the Local Government may, by notification, declare to be liquor for the purposes of this Act,

(15) "manufacture" includes—

(I) every process, whether natural or artificial, by which any excisable article is produced or prepared (including the tapping of *tari* producing trees and the drawing of *tari* from trees),

(II) re distillation, and

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1 The word 'intoxicating' in sub-clauses (ii) and (iii) of clause (13) was repealed by the Bengal Excise (Amendment) Act 1914 (Ben Act VII of 1914) s 6 (4) and is omitted

2 The word 'and' in sub clause (ii) of clause (13) was repealed by the Bengal Excise (Amendment) Act 1914 (Ben Act VII of 1914) s 6 (1) and is omitted

3 Sub-clause (iia) was inserted by the Bengal Excise (Amendment) Act 1914 (Ben Act VII of 1914) s 6 (4)

4 For notifications issued under s 2 (13) (iii) for Bengal as constituted on the 31st March, 1912—*see* the Bengal Local Statutory Rules and Orders 1912 Vol I Pt VI p 724

5 These words enclosed in square brackets were substituted for the words 'intoxicating liquor' by the Bengal Excise (Amendment) Act 1914 (Ben Act VII of 1914) s 6 (5) (a)

6 The words 'all liquid consisting of or containing alcohol" were repealed by the Bengal Excise (Amendment) Act, 1914 (Ben Act VII of 1914) s 6 (5) (b) and are omitted

(III) every process for the rectification flavouring, blending or colouring of liquor, [1] [or for the reduction of liquor for sale ;]

(16) "*pachwai*" means fermented rice, millet or other grain, whether mixed with any liquid or not, and any liquid obtained therefrom, whether diluted or undiluted ; but does not include beer ;

(17) "place" includes building, house, shop, booth, vessel, raft, [2] [vehicle] and tent ;

(18) expressions referring to "sale" include any transfer otherwise than by way of gift ;

(19) "spirit" means any liquor containing alcohol obtained by distillation, whether it is denatured or not ;

(20) "*tari*" means fermented or unfermented juice drawn from any cocoanut, palmyra, date or other kind of palm tree ; and

(21) "transport" means to remove from one place to another within Bengal.

S. 2 Cl. 7 —

Tinctures of cinchona, cardamom or ginger and spirits of nitric ether are not excisable articles.

Emp Vs Motilal Chander—16 C.W.N. 785.

S. 2 Cl. 15 —

The essence of the word "manufacture" as defined in S. 2 Cl. 15 is that it is a process, a continuous and regular action or succession of actions taking place or carried on in a definite manner and leading to the accomplishment of some result. Therefore the mere dilution of denatured spirit with water is not a process of manufacture of an excisable article

Biswas Vs. Emp —18 C.W.N. 53.

S. 2 Cl. 20 —

The expression "juice drawn from any cocoanut" does not refer to the milk of the cocoanut itself, but means the juice of the palm tree of whatever species and not its fruit.

Emp Vs. Motilal Chander—16 C.W.N. 785.

[1] [illegible] (III) [illegible] (IV) [illegible] Act VII of 1910, s. 4 (1).

[2] [illegible] Act VII of 1910, s. 4 (1).

Spirituous liquor—What is—S 2 —

The term spirituous liquor has not been defined in the Act It does not include a medicinal preparation merely because it is a liquid substance containing alcohol in its composition The case would be different if alcohol or spirits were manufactuted separately for the purpose of being used in the preparation of a medicine

Ganesh Chander Sikdar—24 Cal 157.

Spirituous liquor—What is—S 2 —

The Accused was convicted of selling toddy to a European soldier under S 14 of Act III of 1880, Cantonments Act, and sentenced to pay a fine of 50 Rs It was urged in revision that fermented toddy does not come within the words of S 14 which forbids the sale of any spirituous liquor, wine or intoxicating drug to European soldiers Held that the words spirituous liquors must be interpreted in their popular sense Therefore fermented tari or toddy is included in the term spirituous liquor

Q E Vs Ramdhani Passi—15 Cal 452

Provision supplemental to the definition of intoxicating drug

3 The Local Government may, by notification,[1] declare what shall be deemed to be *ganja*, *bhang* or *sidhi*, or *charas*.

Power to declare what shall be deemed to be country liquor and foreign liquor respectively

4 The Local Government, with the previous sanction of the Government of India, may, by notification,[2] declare what, for the purposes of this Act or any portion thereof, shall be deemed to be "country liquor" and "foreign liquor," respectively.

Definition of retail and wholesale

5 (1) The [3] [Local Government] may, by notification,[4] declare, with respect either to the whole of Bengal or to any specified local area, and as regards purchasers generally or any specified class of purchasers, and either generally or for any specified occasion, what quantity of any excisable article shall, for the purposes of this Act, be the limit of a retail sale.

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[1] For a notification issued under s 3 for Bengal as constituted on the 31st March 1912 *see* the Bengal Local Statutory Rules and Orders, 1912 Vol I Pt VI, p 724

[2] For a notification issued under s 4 for Bengal as constituted on the 31st March 1912 *see* the Bengal Local Statutory Rules and Orders 1912 Vol I Pt VI p 724

[3] The words Local Government" in section 5 (1) were substituted for the word Board' by the Bengal Excise (Amendment) Act 1914 (Ben Act VII of 1914) s 5 (2)

[4] For a list of notifications issued under s 5 for Bengal as constituted on the 31st March 1912 *see* the Bengal Local Statutory Rules and Orders, 1912 Vol I, Pt VI p 724

(2) The sale of any excisable article in any quantity in excess of the quantity declared in respect thereof under sub-section (1) shall be deemed to be a sale by wholesale.

Saving of certain Acts

6. (1) Nothing contained in this Act shall affect the provision of—

(*a*) the Calcutta Suburban Police Act, 1866, or

(*b*) the Calcutta Police Act, 1866, or

(*c*) the Sea Customs Act, 1878, or

(*d*) the Cantonments Act, 1889,[1] or

(*e*) the Indian Tariff Act, 1894 (except section 6 thereof).

(2) All references to Act XXI of 1856 in the said Calcutta Suburban Police Act, 1866, and all references to Act XI of 1849 in the said Calcutta Police Act, 1866, shall be construed as reference to this Act

CHAPTER II —ESTABLISHMENTS, CONTROL, APPEAL AND REVISION.

Establishments and delegation and withdrawal of powers

7. (1) The administration of the Excise Department and the collection of the excise-revenue within a district shall ordinarily be under the charge of the Collector.

(2) The Local Government may, by notification[2] applicable to the whole of Bengal or to any specified local area,—

(*a*) appoint an officer who shall, subject to such control as the Local Government may direct, have the control of the administration of the Excise Department and the collection of the excise-revenue ;

(*b*) appoint any person to exercise all or any of the powers and to perform all or any of the duties, conferred and imposed on a

1 Act XIII of 1889 has been repealed and re-enacted by the Cantonments Act, 1910 of 1910), and this reference should now be construed as a reference to the latter Act General Clauses Act, 1897 (X of 1897) s 8

2 For notifications issued under s 7 (2) for Bengal as constituted on the 31st *see* the Bengal Local Statutory Rules and Orders, 1912, Vol I, pp XI, pp 724.

Collector by or under this Act, either concurrently with, or in subordination to, or to the exclusion of, the Collector, and subject to such control as the Local Government may direct,

(*c*) appoint officers of the Excise Department, of such classes, and with such designations, powers and duties, as the Local Government may think fit,

(*d*) order that all or any of the powers and duties assigned by or under this Act to any officer appointed under clause (*c*) of this section shall be exercised and performed by any Government officer or any other person,

(*e*) delegate to [1] * the Commissioner of a Division or the Excise Commissioner all or any of the powers conferred upon the Local Government by or under this Act except the power conferred by section 85 to make rules

(*f*) withdraw from any officer or person all or any of the powers or duties conferred or imposed upon him by or under this Act, and

(*g*) permit the delegation by [1] * the Commissioner of a Division, the Excise Commissioner or the Collector, to any persons or classes of persons specified in such notification, of any powers conferred or duties imposed upon [2] * him by or under this Act

Control appeal and revision

8 (1) The Collector shall in all proceedings under this Act, be subject to the control of the Excise Commissioner, and shall, in such matters as the Local Government may direct, be subject also to the control of the Commissioner of the Division

(2) Orders passed under this Act or under any rule made hereunder shall be appealable in such cases, to such authorities and under such procedure as may be prescribed by rule made under section 85, clause (*c*)

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1 The words the Board in clauses (*e*) and (*g*) of s 7 were repealed by the Bengal Excise (Amendment) Act 1914 (Ben Act VII of 1914) s 5 (*b*) and are omitted

2 The words it or in clause (*g*) of s 7 were repealed by the Bengal Excise (Amendment) Act 1914 (Ben Act VII of 1914) s 5 (*c*) and are omitted

(3) The [1][Local Government] may revise any order passed by a Collector, the Excise Commissioner or the Commissioner of a Division.

CHAPTER III.—IMPORT, EXPORT AND TRANSPORT.

Restrictions on import.

9. (1) No excisable article shall be imported unless—

(*a*) the Local Government has given permission, either general or special, for its import;

(*b*) such conditions (if any) as the Local Government may impose have been satisfied, and

(*c*) the duty (if any) imposed under section 27 has been paid, or a bond has been executed for the payment thereof.

(2) Sub-section (1) shall not apply to any article which has been imported into British India [2][if—

(*i*) the duty (if any) imposed on such importation under the Indian Tariff Act, 1894, or the Sea Customs Act, 1878, has been paid, or

(*ii*) a bond has been executed for the payment of such duty.]

(3) Clauses (*a*) and (*b*) of sub-section (1) shall not apply to liquor manufactured in British India and declared under section 4 to be foreign liquor

Restriction on export or transport.

10. No excisable article shall be exported or transported unless—

(*a*) the duty (if any) imposed under section 27, or

(*b*) if the article was previously imported, the duty (if any) imposed on its importation under the Indian Tariff Act, 1894, or the Sea Customs Act, 1878,

has been paid, or a bond has been executed for the payment thereof;

1 The words "Local Government" in s. 9 (3) were substituted for the word "Board" by the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914), s. 5 (2).

2 These words enclosed in square brackets were substituted for the words "and was liable on such importation to duty under the Indian Tariff Act, 1894, or the Sea Customs Act, 1878," by the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914), s. 7.

Provided that the [1] [Local Government] may, subject to such conditions (if any) as it thinks fit to impose, exempt [2] any excisable article from the provisions of this section

Power to prohibit import export or transport

11. The Local Government may, by notification,[3]—

(*a*) with the previous sanction of the Government of India, prohibit the import or export of any excisable article into or from Bengal or any part thereof, or

(*b*) prohibit the transport of any excisable article

Passes for import export or transport

12 (1) No excisable article exceeding such quantity as the Local Government may prescribe by notification [4] either generally or for any specified local area, shall be imported, exported or transported, except under a pass

Provided that, in the case of duty paid foreign liquor other than denatured spirit, such passes shall be dispensed with unless the Local Government, by notification, otherwise directs with respect to any local area

(2) The passes required by sub-section (1) may be granted by the Collector

(3) Such passes may be either general for definite periods and particular kinds of excisable articles, or special for specified occasions and particular consignments only.

CHAPTER IV —MANUFACTURE, POSSESSION AND SALE.

License required for manufacture

13 (*a*) No excisable article shall be manufactured,

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1 The words "Local Government" in s 10 were substituted for the word Board by the Bengal Excise (Amendment) Act 1914 (Ben Act VII of 1914) s 5 (a)

2 For orders made under the proviso to s 10 for Bengal as constituted on the 31st March 1912 *see* the Bengal Local Statutory Rules and Orders 1912 Vol I Pt VI p 725

3 For a notification issued under s 11 (*b*) for Bengal as constituted on the 31st March 1912 *see* the Bengal Local Statutory Rules and Orders 1912 Vol. I Pt VI p 725.

4 For a notification issued under s 12 (1) for Bengal as constituted on the 31st March 1912 *see* the Bengal Local Statutory Rules and Orders 1912 Vol I Pt VI, p 725

(*b*) no hemp [illegible] d or a bond has been executed for the

(*c*) no portion of [illegible] an intoxicati[illegible] n his possession any excisable shall be colle[illegible] not been obtained from a [illegible] e same

(*d*) no liquor shall be b[illegible]

(*e*) no distillery or brewery [illegible]

(*f*) no person shall use, keep [illegible] osited or kept in a materials, still, utensil, im[illegible] f storage licensed, soever for the purpose of manufa[illegible] or article other than *tari*, [illegible] ossession of a

except under the authority and subject to the terms and [illegible] of a license granted in that behalf by the Collector [illegible]

Provided that any *tari* producing tree may be tapped and [illegible] who has may be drawn from any tree, without a license under this section by [illegible] possess the person in possession of the tree,—

(*i*) for the purpose of being used in the manufacture of gur [illegible] er or molasses, or

[[1](*ii*) for the purpose of being used solely for the preparation of food for domestic consumption, and not—

(*I*) as an intoxicant, or

(*II*) for the preparation of any intoxicating article, or

(*III*) for the preparation of any article for sale, or]

(*iii*) up to a limit of four seers, for the domestic consumption of the said person

Drawing of *tari* in notified areas.

14 (1) Notwithstanding anything contained in the proviso to section 13,—

(*i*) no *tari* producing tree shall be tapped, and

(*b*) no *tari* shall be drawn from any tree,

in any local area specified in this behalf by the Local Government by notification, except under the authority and subject to the terms and conditions of a license granted in that behalf by the Collector.

[1] The proviso (ii) in s. 13 was inserted by the Bengal Excise (Amendment) Act, 1916, Ben. Act VII of 1916, s. [illegible]

(2) Provided that, when any exclusive privilege of manufacturing *tari* has been granted under section 22, the Local Government may declare that the written permission given by the grantee to draw *tari* shall have the same force and effect as a license granted by the Collector under sub section (1) of this section

(3) Provided also that, in any local area specified by notification under sub section (1), the Local Government may, by notification, declare that that sub section shall not apply to trees tapped or *tari* drawn under such special conditions as the [1][Excise Commissioner] may prescribe

Establishment of distilleries breweries or warehouses

15 (1) The Excise Commissioner may,—

(*a*) subject to any restrictions imposed by the Local Government establish, or authorize the establishment of distilleries or breweries, in which liquor may be manufactured under a license granted under section 13,

(*b*) discontinue any such distillery or brewery,

(*c*) establish, or authorize the establishment of, warehouses, wherein any excisable article may be deposited and kept without payment of duty, and

(*d*) discontinue any such warehouse

(2) No distillery, brewery or warehouse as aforesaid shall be established except by, or under the authority of, the Excise Commissioner

License required for depositing or keeping excisable article in warehouse or other place of storage

16 No person shall, except under the authority and subject to the terms and conditions of a license granted in that behalf by the Collector, deposit or keep any excisable article in any warehouse or other place of storage established, authorized or continued under this Act

Payment of duty on removal from distillery brewery warehouse or other place of storage

17 No excisable article shall be removed from any distillery, brewery, warehouse or other place of storage licensed, established, authorized or continued under this Act, unless the duty (if any) imposed

1 The words Excise Commissioner" in s 14 (2) were substituted for the word Board by the Bengal Excise (Amendment) Act 1914 (Ben Act VII of 1914) s 5 (3)

under section 27 has been paid or a bond has been executed for the payment thereof

Possession of excisable articles not obtained from a licensed vendor

18 (1) No person shall have in his possession any excisable article which has not been obtained from a licensed vendor of the same

(2) Sub section (1) shall not apply to—

(*a*) any excisable article lawfully deposited or kept in a distillery, brewery, warehouse or other place of storage licensed, established, authorized or continued under this Act, or

(*b*) any excisable article lawfully in the possession of a licensed vendor of the same, or

(*c*) any excisable article in the possession of a person who has lawfully imported it, or who is authorized by the Collector to possess it, or

(*d*) any foreign liquor in the possession of any common carrier or warehouseman as such, or purchased at a sale authorized by clause (*a*) of proviso (3) to section 20, or

(*e*) *tari* intended to be used in the manufacture of *gur* or molasses, or

(*f*) *tari* intended to be used in the manufacture of bread by a person holding a permit to use *tari* for that purpose, or

[1][(*ff*) *tari* intended to be used solely for the preparation of food for domestic consumption and not—

(*i*) as an intoxicant, or

(*ii*) for the preparation of any intoxicating article, or

(*iii*) for the preparation of any article for sale, or]

(*g*) *tari*, up to a limit of four seers, when in the possession of the person possessing the tree from which it was drawn and intended to be used for his domestic consumption, or

1 The clause (*ff*) ins. as was inserted by the Bengal Excise (Amendment) Act, 19 (Bengal Act VII of 1914) s. 9

(*h*) intoxicating drugs in the possession of any person licensed to cultivate or collect the plants from which such drugs were produced, when such possession is in accordance with the conditions of his license.

Possession of excisable articles generally

19. (1) No person not being licensed to manufacture, cultivate, collect or sell any excisable article shall have in his possession any quantity of any excisable article in excess of such quantity as the [1][Local Government] has, under section 5, declared to be the limit of a retail sale, except under a permit granted by the Collector in that behalf

(2) Sub-section (1) shall not apply to—

(*a*) any foreign liquor (other than denatured spirit) which is in the possession of any common carrier or warehouseman as such, or

(*b*) any foreign liquor which has been purchased by any person for his *bona fide* private consumption and not for sale, or

(*c*) *tari* intended to be used in the manufacture of *gur* or molasses [2]

[3][(*d*) *tari* intended to be used solely for the preparation of food for domestic consumption, and not—

(*i*) as an intoxicant, or

(*ii*) for the preparation of any intoxicating article, or

(*iii*) for the preparation of any article for sale]

(3) A licensed vendor shall not have in his possession at any place other than that authorized by his license any quantity of any excisable article in excess of such quantity as the [1][Local Government] has, under section 5, declared to be the limit of a retail sale, except under a permit granted by the Collector in that behalf

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1 The words Local Government in sub-section (1) and (3) of s 19 were substituted for the word Board by the Bengal Excise (Amendment) Act 1914 (Ben Act VII of 1914) s 5 (2)

2 *Insert* or

3 Clause (*d*) in s 19 was inserted by the Bengal Excise (Amendment) Act 1914 (Bengal Act VII of 1914) s 10

(4) Notwithstanding anything contained in the foregoing sub-sections, the Local Government may, by notification,[1] prohibit the possession by any person or class of persons, either in Bengal or in any specified local area, of any excisable article either absolutely, or subject to such conditions as it may prescribe.

License required for sale

20. No excisable article, and no portion of the hemp plant (*Cannabis sativa*) from which an intoxicating drug can be manufactured or produced, shall be sold except under the authority and subject to the terms and conditions of a license granted in that behalf by the Collector :

Provided as follows :—

(1) a license for sale in more than one district shall be granted only by the Excise Commissioner[2] [or by a Collector specially authorized in that behalf by the Excise Commissioner ;]

[3] [(1*a*) a license for sale granted under the Excise law in force in any other Province may, on such conditions as may be determined by the Excise Commissioner, be deemed to be a license granted under this Act ,]

(2) a cultivator or owner of any hemp plant (*Cannabis sativa*) may sell, without a license, those portions of the plant from which an intoxicating drug can be manufactured or produced, to any person licensed under this Act to deal in the same, or to any officer whom the Excise Commissioner may authorize to purchase or receive the same ;

(3) no license shall be required for any of the following sales, namely :—

(*a*) the sale of foreign liquor lawfully procured by any person for his private use—when such sale is made by such person himself or on his behalf upon his quitting a station, or on behalf of his representatives in interest after his decease ;

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1 For a notification issued under s. 19 (4) for Bengal as constituted on the 31st March, 1912—see the Bengal Local Statutory Rules and Orders, 1912, Vol. I, Pt. VI, p. 726.

2 These words enclosed in square brackets were added to proviso (1) of s. 20 by the Bengal Excise (Amendment) Act, 1911 (Ben. Act VII of 1911), s. 11 (a).

3 Clause (1*a*) was inserted by the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914), s. 11 (*b*).

(*b*) the sale of *tari*, [1] [lawfully possessed] by a person in possession of the tree from which it was drawn, to a person licensed under this Act to manufacture or sell *tari*;

(*c*) the sale of *tari* [2] [lawfully possessed and] intended to be used in the manufacture of *gur* or molasses; or

(*d*) the sale of *tari* [2] [lawfully possessed and] intended to be used in the manufacture of bread to a person holding a permit to use *tari* for the purpose of making bread, [3] [or

(*e*) the sale of *tari* lawfully possessed and intended to be used solely for the preparation of food for domestic consumption and not—

(*i*) as an intoxicant, or

(*ii*) for the preparation of any intoxicating article, or

(*iii*) for the preparation of any article for sale].

Manufacture and sale of liquor in or near cantonments.

21. Within the limits of any military cantonment, and within such distance from those limits as the Local Government may in any case prescribe, [4] no license for the manufacture or sale of liquor shall be granted, except with the previous consent of the Commanding Officer.

Grant of exclusive privilege of manufacture and sale of country liquor or intoxicating drugs.

22. (1) The Local Government may grant to any person, on such conditions and for such period as it may think fit, the exclusive privilege—

(*a*) of manufacturing, or supplying by wholesale, or

(*b*) of manufacturing, and supplying by wholesale, or

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1 The words "lawfully possessed" were inserted in proviso (3) (*b*) of s. 20 by the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914), s. 11, (*c*).

2 The words "lawfully possessed and" were inserted in proviso (3) (*c*) and (*d*) of s. 20 by the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914), s. 11 (*d*).

3 These words enclosed in square brackets in proviso (3) of s. 20 were added by the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914), s. 11 (*e*).

4 For an order made under s. 21 for Bengal as constituted on the 31st March, 1912 *see* the Bengal Local Statutory Rules and Orders, 1912, Vol. I, Pt. VI, p. 726.

(c) of selling, by wholesale or retail, or

(d) of manufacturing or supplying by wholesale and selling retail, or

(e) of manufacturing and supplying by wholesale and selling retail,

any country liquor or intoxicating drug within any specified local area

Provided that public notice shall be given of the intention to grant any such exclusive privilege, and that any objections made by any person residing within the area affected shall be considered before an exclusive privilege is granted

(2) No grantee of any privilege under sub section (1) shall exercise the same unless or until he has received a license in that behalf from the Collector[1] [or the Excise Commissioner.]

Transfer of exclusive privilege

23 (1) A grantee of an exclusive privilege under section 22 shall not let or assign the same or any portion thereof unless he is expressly authorized, by a condition made under that section, to do so

(2) Such letting or assignment shall be made only to a person approved by the Collector or (if the letting or assignment extends to more than one district) the Excise Commissioner

(3) The lessee or assignee shall not exercise any rights as such unless and until the Collector has, upon his application, granted him a license to do so

Partnership for the sale of Excisable articles—whether legal—S 23 —

In 31 Cal 798 (Behari Lal Shah vs Jagadish Chandra Shaha) the licensee sold his stock in trade to another person, with the intention that the transferee should carry on the business of selling liquor without obtaining a license. This agreement was held to be void It does not follow from this decision or from the prohibition contained in the Act against transferring, sub-letting and assigning, that a partnership in any form for the sale of Excisable articles is illegal

J N Bhattacharjee Vs C C Saha—(Cal) 29 I C. 480.

[illegible] Act [illegible] 1) Act [illegible] Act [illegible] 1911 [illegible] 22 were added by the Bengal Excise (Amendment) Act [illegible] 1911.

(*f*) on *tari* drawn under a license granted under section 14, sub-section (1),—by a tax on each tree from which the drawing of *tari* is permitted :

Provided that, where payment is made upon the issue of an excisable article for sale from a warehouse, it shall be at the rate of duty in force on the date of issue of such article from such warehouse :

Provided also that no tax shall be levied in respect of any tree from which *tari* is drawn only for the manufacture of *gur* or molasses and under such special conditions as the [1][Excise Commissioner] may prescribe.

Payment for grant of exclusive privilege

29. Instead of, or in addition to, any duty leviable under this Act, the Local Government may accept payment of a sum in consideration of the grant of any exclusive privilege under section 22.

CHAPTER VI.—LICENSES, PERMITS AND PASSES.

Preparation of list of places for which it is proposed to grant licenses for the retail sale of spirit

30. Before the expiration of every period for which existing licenses for the retail sale of spirit are in force, the Collector shall prepare a list, in a form prescribed [2] by the [3][Excise Commissioner,] showing what licenses it is proposed to grant for the retail sale of spirit, for consumption on the vendors' premises, for the next period of settlement.

Publication of such list

31. (1) The Collector shall—

(*a*) cause to be conspicuously affixed upon the site of each shop referred to in the said list a notice to the effect that it is proposed to grant a license for the retail sale of spirit thereat, or in the vicinity, for the next period of settlement ;

1 The words Excise Commissioner in sec. were substituted for the word Board by s. 5 (a) of Act VII of 1914.

2 For an order

3 Board

(*b*) if any site referred to in the said list is not at the time used for the retail sale of spirit, cause a notice, to the effect that it is proposed to grant a license for the retail sale of spirit thereat, or in the vicinity, for the next period of settlement, to be proclaimed in the locality by beat of drum,

(*c*) send to the Chairman of each Municipality an extract reproducing so much of the said list as relates to shops in the Municipality; and

(*d*) cause the said list, or any portion thereof, to be published in such other methods (if any) as may be prescribed by rule made under section 85, clause (*j*).

(2) When an extract is sent to the Chairman of any Municipality under clause (*c*) of sub section (1), he shall—

(*i*) cause a copy of the extract to be conspicuously affixed at the central office of the Municipality, and

(*ii*) send to each member of each Ward Committee (if any) a copy of so much of the extract as relates to shops situated in his Ward

Time for preparation and publication of such list

32 The list mentioned in section 30 shall be prepared, and shall be published under section 31, at such time as may be prescribed by rule made in this behalf under section 85, clause (*j*)

Submission of objections and opinions to Collector

33 (1) Objections to any proposal contained in any list prepared under section 30 may be received, at any time prior to the date prescribed by rule made in this behalf under section 85, clause (*j*), from—

(*a*) persons paying municipal rates and residing in any Municipality to which such proposal relate, or (if any such Municipality is divided into Wards) in the Ward to which such proposal relates or in any Ward adjoining such Ward, or

(*b*) (in the case of shops not situated in any Municipality) persons owning or occupying land, or residing, in the vicinity of the shop to which such proposal relates; or

(*c*) the District Magistrate.

(2) Such objections must be submitted to the Collector, or, in any Municipality, either to the Chairman of the Municipality or to the Collector.

(3) Every Chairman of a Municipality to whom an extract has been sent under section 31, clause (*c*), shall send to the Collector, by a date prescribed by rule made in this behalf under section 85, clause (*j*),—

(*i*) all objections (if any) to proposals contained in the extract which may be received by the Chairman, from persons paying municipal rates, before that date, and

(*ii*) any opinion which the Chairman or the Municipal Commissioners may wish to record on the said proposals.

Grant of licenses by Collector, and submission of list objections and opinions to Excise Commissioner

34 (1) After the date prescribed for the receipt of objections and opinions submitted under section 33, the Collector shall consider the same, and shall, if necessary, revise the said list, and shall decide for what places licenses for the retail sale of spirit shall be granted, and may, in his discretion, grant licenses accordingly.

(2) The Collector shall then forthwith submit the said list, as so revised, and the said objections and opinions, and his own opinion,—

(*a*) in the case of shops outside the Calcutta district, to the Commissioner of the Division, for transmission to the Excise Commissioner, and

(*b*) in the case of shops in the Calcutta district, to the Excise Commissioner.

(3) The Commissioner of the Division shall consider the list, objections and opinions so sent to him, and shall forward them, with his own opinion and recommendations (if any), to the Excise Commissioner.

Finality of decision of Excise Commissioner or Local Government.

35 The Excise Commissioner shall consider the list, objections and opinions so sent to him, and may modify or annul any order passed or license granted by

the Collector; and notwithstanding anything contained in section 8, his orders shall be final;

Provided that, if there be any difference of opinion between—

(*a*) the Excise Commissioner, and

(*b*) the Commissioner of a Division, the Chairman of the Corporation of Calcutta or the Corporation of Calcutta (if the opinion of the Municipal Commissioners of Calcutta, referred to in sub-clause (*ii*) of section 33, has been recorded at a meeting of the Corporation),

the matter shall be referred by the Excise Commissioner to the [1][Local Government,] whose decision shall be final.

Application of sections 30 to 35 to licenses for retail sale of excisable articles other than spirit

36. The provisions of sections 30 to 35 as to licenses for the retail sale of spirit shall apply also in respect of licenses for the retail sale, in any local area specified in any order made by the [1][Local Government] in this behalf, of any other excisable article specified in such order.

Exemption of certain licenses from sections 30 to 36

37. Sections 30 to 36 shall not apply in the case of any license which it is proposed to grant—

(*a*) to any person, for the retail sale of any excisable article, during any period not exceeding six months; or

(*b*) to any person, for the retail sale of any denatured spirit; or

(*c*) to any person, for the retail sale of any excisable article, in substitution for a license which has been cancelled or surrendered before the expiration of the period for which it was granted; or

(*d*) to any medical practitioner, chemist, druggist, apothecary or keeper of a dispensary, for the retail sale of any excisable article for medicinal purposes.

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[1] [illegible] by the [illegible] Act VII of 1919, s. 5 (2).

Fees for licenses, conditions and form of and duration of licenses, permits and passes.

38. (1) Every license, permit or pass granted under this Act—

(*a*) shall be granted—

(*i*) on payment of such fees (if any), and

(*ii*) subject to such restrictions and on such conditions, and

(*b*) shall be in such form and contain such particulars as the [1][Local Government] may direct.

(2) Every license, permit or pass under this Act shall be granted for such period (if any) as may be prescribed by rules made by the Local Government under section 55 clause (*e*).

39. *(Continuance of licenses granted under former law.) Repealed by the Bengal Excise (Amendment) Act, 1914 (Bengal Act VII of 1914), s. 14.*

Counterpart agreement by licensee and security or deposit.

40. Any authority granting a license under this Act may require the grantee to execute a counterpart agreement in conformity with the tenor of his license, and to give such security for the performance of such agreement, or to make such deposit in lieu of security, as such authority may think fit.

Technical defects, irregularities and omissions.

41. (1) No license granted under this Act shall be deemed to be invalid on reason merely of any technical defect, irregularity or omission in the license or in any proceedings taken prior to the grant thereof.

(2) The decision of the Excise Commissioner or (where a reference is made to the[2] Local Government under section 35) the [3][Local Government,] as to what is a technical defect, irregularity or omission, shall be final.

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1. The words "Local Government" in s. 38 (1) were substituted for the words "Board" by the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914), s. 5(2).

2. For a list of orders made under s. 8(*e*) and 1(*b*) of Bengal as constituted on the 1st March 1912, *see* the Bengal Local Statutory Rules and Orders, 1912, Vol. I, Part VI, p. [illegible].

3. The words "Local Government" in s. 41 (2) were substituted for the words "Board" by the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914), s. 5(2).

Power to cancel or suspend license, permit or pass

42. (1) Subject to such restrictions as the Local Government may prescribe, the authority who granted any license, permit or pass under this Act may cancel or suspend it—

(*a*) if it is transferred or sublet by the holder thereof without the permission of the said authority ; or

(*b*) if any duty or fee payable by the holder thereof be not duly paid ; or

(*c*) in the event of any breach by the holder thereof, or by any of his servants, or by any one acting on his behalf with his express or implied permission, of any of the terms or conditions thereof ; or

(*d*) if the holder thereof is convicted of any offence punishable under this Act or any other law for the time being in force relating to revenue, or of any cognizable and non-bailable offence, or of any offence punishable under the Merchandise Marks Act, 1889, or under any section which has been introduced into the Indian Penal Code by section 3 of that Act ; or

(*e*) if the holder thereof is punished for any offence referred to in clause 8 of section 167 of the Sea Customs Act, 1878 ; or

(*f*) where a license, permit or pass has been granted on the application of the holder of an exclusive privilege granted under section 22,—on the requisition in writing of such holder ; or

(*g*) if the conditions of the license, permit or pass provide for such cancellation or suspension at will.

(2) When a license, permit or pass held by any person is cancelled under clause (*a*), clause (*b*), clause (*c*), clause (*d*) or clause (*e*) of sub section (1), the authority aforesaid may cancel any other license, permit or pass granted to such person under this Act, or under any other law for the time being in force relating to Excise, or under the Opium Act, 1878

(3) The holder of a license, permit or pass shall not be entitled to any compensation for its cancellation or suspension under this

(*ii*) payment of the fees payable for the license for the whole period for which it would have been current but for such surrender

Provided that, if the Excise Commissioner is satisfied that there is sufficient reason for surrendering a license, he may remit to the holder thereof the sum so payable on surrender, and any fees paid in advance, or any portion of such sum or fees]

(2) Sub section (1) shall not apply in the case of a license for the sale of any country liquor or intoxicating drug in the exercise of an exclusive privilege granted under section 22

Explanation —The words 'holder of a license," as used in this section, include a person whose tender or bid for a license has been accepted, although he may not actually have received the license

Bar to right of renewal and to compensation

144A No person to whom a license has been granted under this Act shall have any claim to the renewal of such license or, save as provided in section 43, any claim to compensation on the determination thereof

CHAPTER VII —DEPARTMENTAL MANAGEMENT OR TRANSFER

Power of Collector to take grants under management or to transfer them

45 If any holder of a license granted under this Act, or any person to whom an exclusive privilege has been granted under section 22, contravenes any provision of this Act or any rule made hereunder or makes default in complying with any condition imposed upon him by such license or privilege, or

if any holder of a license granted under this Act surrenders the

(*b*) transfer the unexpired portion of the grant, at the risk and loss of the said person, to any other person:

[1]* * * * *

CHAPTER VIII.—OFFENCES AND PENALTIES.

Penalty for unlawful import, export, transport, manufacture, possession, sale, etc.

46. If any person in contravention of this Act, or of any rule, notification or order made, issued or given, or license, permit or pass granted, under this Act,—

(*a*) imports, exports, transports, manufactures, possesses or sells any excisable article, or

(*b*) cultivates any hemp plant (*Cannabis sativa*), or

(*c*) collects or sells any portion of the hemp plant (*Cannabis sativa*) from which an intoxicating drug can be manufactured or produced, or

(*d*) bottles any liquor for purposes of sale, or

(*e*) works any distillery or brewery, or

(*f*) uses, keeps or has in his possession any materials, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing any excisable article other than *tari*, or

(*g*) establishes any distillery, brewery or warehouse, or

(*h*) removes any excisable article from any distillery, brewery, warehouse or other place of storage licensed, established, authorized or continued under this Act,

he shall be liable to imprisonment for a term which may extend to [2] [six] months, or to fine which may extend to one thousand rupees, or to both :

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1 The proviso to s 45 was repealed by the Bengal Excise (Amendment) Act, 1914 (Ben Act VII of 1914), s. 17, and is omitted It ran thus —

"Provided that, if the Excise Commissioner is satisfied that there is sufficient reason for surrendering a license, he may remit such loss as may accrue in consequence of the surrender, or any portion thereof "

2 The words "six" in s. 46 was substituted for the word "three" by the Bengal Excise (Amendment) Act, 1914 (Ben Act VII of 1914), s. 18.

[1] [Provided that, if any person is convicted under this section of any offence committed in respect to cocaine, he shall be liable to imprisonment for a term which may extend to one year, or to fine which may extend to two thousand rupees, or to both]

Difference between Accomplice and Spy or informer—Corroboration of evidence of spy—S 46 of Act V of 1909 —

The Excise Deputy Collector of Bhagalpur deputed one B a student of the Tej Narain Jubilee College to purchase cocaine from the petitioner. B purchased a phial of cocaine on 5th April and 2 phials on 6th April with money supplied by the Excise Sub Inspector and handed them over to the Deputy Collector on the 6th The petitioner was tried for illicit sale of cocaine by the Deputy Magistrate of Bhagalpur and was sentenced to a fine of Rs 200

It was contended in appeal that the conviction was based on the uncorroborated testimony of an accomplice

Held that B was not an accomplice and the conviction of the Accused was good Though the testimony of a spy does not stand in need of corroboration in order to be acted upon, it is entirely for the Judge of fact to decide in each particular case what weight he will attach to this kind of evidence, the question depending upon the character of each individual witness It may be difficult to draw the line of demarcation between an accomplice and a pretended confederate, such as a detective, spy or decoy; but the line may be drawn in this way —If the witness has made himself an agent for the prosecution before associating with the wrong doers or before the actual perpetration of the offence, he is not an accomplice, but he may be an accomplice if he extends no aid to the prosecution until after the offence has been committed

Further, one who as a spy or a detective associates with criminals solely for the purpose of discovering and making known their crimes, and who acts throughout with this purpose, and without any criminal intent is not an accomplice, and it is immaterial that he assist more or less in the commission

blue labels bearing on them the printed word cocaine, 31 small paper packets of a similar white powder containing 2 grains each The Chemical Examiner certified that Cocaine Hydrochlorate was detected in the contents of the glass phial and of the 31 paper packets The trying Magistrate found the Accused guilty under S 46 and sentenced him to 6 weeks R I The Sessions Judge referred the case to the High Court on the ground that the Magistrate had not recorded a finding that the Accused was in possession of 20 grains or more of cocaine without a licence, pass or permit, that the Chemical Examiner s certificate did not mention the quantity, and therefore the offence charged had not been established

Held that under the notification of November 1911 it is an offence for any person other than those specified to have any cocaine at all except with a medical man s prescription, and then only 5 grains In all cases, the burden of proof to show under what authority he obtained cocaine lies on the Accused

Mukunda Sahu Vs Emp 18 C W N 1023=23 I C 470

Power of Magistrate to fine under the Act —S 46 —

A Magistrate may impose a fine exceeding 1,000 Rs under the Act notwithstanding the provisions of the Cr I C

Surroop Chander Dutt—7 W R 29

Preparation by Kaviraj ees of preparation containing alcohol—
Ss 46—90 (B C V of 1909) —

The Accused were convicted in respect of the manufacture and sale of a liquid substance spoken of as "Mrita Sanjivani Sudha" and were sentenced under S 46 (a) of the above Act, each to pay a fine of Rs 200 or in default to undergo 6 weeks R I

The manufacture and sale was admitted by the Accused who were Kaviraj ees by profession Their contention was that the drug was a beneficient drug prepared in accordance with a formula in an Ayurvedic Pharmacopœia and used for medicinal purposes only. The preparation was an alcoholic liquid varying in strength from 31 7 to 13 underproof

Held, on Revision, that there can be no question that the manufacture and sale of this preparation otherwise than in conformity with the provisions of the Excise Act is an offence, unless the petitioners can show that the article has been exempt under S 90 of the Act or that by reason of repugnancy in the subject, the definition is not applicable It is conceded that the article is not within the terms of any Notification issued under S 90 It would stultify the Court and ignore the plain purpose of the Legislature, to say that a preparation containing alcohol is not within the provisions of the Bengal Excise

Act simply because it is a medicinal preparation or may be used for medicinal purposes

Ganesh Chandra Sil dar Vs Emp and another—(Cal) 40 I C 740

Possession of liquor—S 46 —

Liquor was consigned from Europe to a company of licensed vendors M & Co , at Agra At the request of the consignee, the Accused paid the duty and landing charges and cleared the consignment at Calcutta While on the way to Howrah Station for despatch to the consignee at Agra, the Excise authorities seized the liquor and charged him for being in possession of Excise able liquor without a pass A was convicted Held that the conviction was wrong It cannot be said that anybody who has anything to do with the transit of liquor is within the Section If the Accused was within the Section, then the ship owners who landed the goods, the Railway Company who would carry the goods cannot escape the necessity of obtaining a pass from the Collector and probably a pass from each District of Bengal through which they carry them

In the matter of Kster—11 C L R 427=9 Cal 223.

Possession of Invoice and Bill of lading Whether possession of cocaine—Attempt to import cocain —Ss 2(12) 46(a) 52 and 61 (B C V of 1909) —

The petitioner was in possession of an Invoice and Bill of Lading which purported to cover old wearing apparel exported by P & Co , of London to R S at Darjeeling This Bill of Lading with endorsements by P & Co , and R S were made over by the Accused to Cox & Co in order that the goods might be cleared and passed through the Customs house The goods were found to contain a large quantity of cocaine which there can be no room for reasonable doubt, was sought to be illicitly exported in contravention of the provisions of the Excise Act The Accused when apprised of the discovery professed to be acting on behalf of R S He was given every opportunity to produce R S or to give information about him but he failed to give any clue.

Held (1) that the Accused could not be said to have dominion or control over the goods, and therefore his conviction under Ss 46 and 52 for being in

Manufacture of "Kameswar Modak" containing bhang—Whether offence—Excise Act (I of E B and A) of 1910 Ss 53—72 —

S, a Kaviraj, was convicted and sentenced to pay a fine of Rs 25 under S 53 of the Act for manufacturing and selling an Excisable article *viz*, a mixture called "Kameswar Modak" which contains "Bhang"

The defence of the Kaviraj was that the article in question was a *bona fide* medicated article prepared by him for medicinal purposes Held that the Accused was protected by S 72 He was not however charged with the illegal possession of Bhang, in which case it would have been necessary to consider the mode in which possession was obtained

Satis Chandar Roy Vs Emp—17 C W N 939=19 I C 956

Presumption as to offence where possession is not satisfactorily accounted for

47. In prosecutions under section 46 it may be presumed, unless and until the contrary is proved, that the accused person has committed an offence punishable under that section in respect of—

(*a*) any excisable article, or

(*b*) any still, utensil, implement or apparatus whatsoever for the manufacture of any excisable article other than *tari*, or

(*c*) any materials which have undergone any process towards the manufacture of an excisable article, or from which an excisable article has been manufactured,

for the possession of which he fails to account satisfactorily

Penalty for altering or attempting to alter any denatured spirit

[1]48. If any person alters or attempts to alter any denatured spirit, whether manufactured in British India or not, with the intention that such spirit may be used for human consumption, whether as a beverage, or internally as a medicine, or in any other way whatsoever, by any method whatsoever,

or has in his possession any spirit in respect of which he knows or has reason to believe that any such alteration or attempt has been made,

he shall be liable to imprisonment for a term which may extend to six months, or to fine which may extend to one thousand rupees, or to both.

1 This s 48 was substituted for the original section by the Bengal Excise (Amendment) Act, 1914 (Ben, Act, VII of 1914), s 20

Denatured spirit—What amounts to manufacture of—Meaning of "Manufacture — Misjoinder of charges—Ss 2 46, 48 75, 81 and 84 (B C V of 1909) —

The Deputy Inspector of Excise, upon information received, searched the premises of Accused and found 32 boxes, each containing 6 bottles, and an isolated bottle of Eau de Ceylon, and also 23 long shaped Eau de-Cologe phials, all containing similar liquid On examination the contents were found to be perfumed denatured spirit The Inspector also found 2 boxes of labels similar to those affixed on the phials He was thereupon prosecuted and charged with possessing without license 193 bottles and 23 phials containing perfumed spirit made with denatured spirit which had been rendered unfit for human consumption, manufacture and sale of such spirit, attempting to render denatured spirit fit for human consumption, having in his possession such spirit, bottling such spirit for purposes of sale He was sentenced to a fine of Rs 210 under S 48 of the Act

On appeal, held that to support a conviction under S 48, two elements must be established viz, first, that the spirit is denatured spirit and, secondly, that the Accused has rendered such spirit fit for human consumption The Legislature cannot have intended to mean by 'denatured spirit" such as would remain unfit for human consumption in spite of dilution with water, as even the most poisonous substances can be rendered not only harmless but in some cases beneficial by sufficient dilution

It is singular that the Act provides for the punishment of an attempt to render fit for consumption denatured spirit it does not provide any punishment for a successful attempt or in other words the completed act and the absence of such a provision suggests that the definition of "denatured' contemplates such a process as will defy any chemical treatment Therefore where the spirit is not denatured and the Magistrate finds that the Accused not only attempted to render the spirit fit for human consumption but actually succeeded in his attempt a conviction under S 48 cannot be supported

Ss 75 and 81 of the Act apply only to proceedings before a Collector, but the Cr P C is applicable to trials before a Magistrate, subject to specified restrictions

The acts imputed to the Accused, namely, manufacturing the excisable article seized and brought into Court, bottling it possessing it, selling from time to time various other articles not before the Court, and attempting to render denatured spirit fit for human consumption, do not constitute the same transaction Where the Accused is charged with doing all these in one charge, and is tried at one trial the trial is vitiated on the ground of misjoinder of charges in contravention of S 233 of the Cr P C

Appeal allowed and conviction quashed

Bisuas Vs Emp 18 C W N 53=22 I C 425

[1]48A In prosecutions under section 48, when the accused person is proved to have been in possession of any spirit which is, or contains, or has been derived from denatured spirit, and in respect of which any such alteration or attempt as is referred to in section 48 has been made, it may, from the mere fact of such possession, be presumed, unless and until the contrary is proved, that such person—

Presumption as to offence under section 48 in certain cases

(*i*) has himself made such alteration or attempt, or

(*ii*) knows or has reason to believe that such alteration or attempt has been made

[1]48B In any prosecution under this Act it may be presumed, unless and until the contrary is proved, that any spirit which contains any quantity of any denaturant is, or has been derived from, denatured spirit

Presumption as to any spirit which contains any denaturant

49 If any licensed manufacturer or licensed vendor, or any person in his employ and acting on his behalf,

Penalty for adulteration by licensed manufacturer or vendor or his servant

mixes, or permits to be mixed, with any excisable article manufactured, sold or kept or exposed for sale by him, any noxious drug or any article prohibited by rule made under section 86 clause (9),

1 Sections 48A and 48B were inserted by the Bengal Excise (Amendment) Act 1914 (Ben Act VII of 1914) s 21

sub clause (*i*), and such mixing does not amount to an offence punishable under section 272 of the Indian Penal Code, or

has in his possession any excisable article in respect of which such admixture has been made]

he shall be liable to imprisonment for a term which may extend to three months, or to fine which may extend to one thousand rupees or to both

Penalty for fraud by licensed manufacturer or vendor or his servant

50 If any licensed manufacturer or licensed vendor, or any person in his employ and acting on his behalf,—

(*a*) sells or keeps or exposes for sale, as foreign liquor, any liquor which he knows or has reason to believe to be country liquor, and such sale does not amount to an offence punishable under section 417 or section 418 of the Indian Penal Code, or

(*b*) marks any bottle, case, package or other receptacle containing country liquor, or the cork of any such bottle, or

deals with any bottle, case, package or other receptacle containing country liquor,

with the intention of causing it to be believed that such bottle, case, package or other receptacle contains foreign liquor,

and such marking or dealing does not amount to an offence punishable under section 482 of the said Indian Penal Code,

he shall be liable to imprisonment for a term which may extend

(*b*) sells any excisable article to a person who is drunk or intoxicated, or

(*c*) sells or delivers any spirit or intoxicating drug to any child apparently under the age of fourteen years, whether for consumption by such child or by any other person, and whether for consumption on or off the premises of such vendor, or

(*d*) permits drunkenness, intoxication, disorderly conduct or gaming on the premises of such vendor; or

(*e*) permits any persons whom he knows, or has reason to believe, to have been convicted of any non bailable offence, or who are reputed prostitutes, to meet, or any such person to remain on the premises of such vendor, whether for the purposes of crime or prostitution or not,

he shall be liable to fine which may extend to five hundred rupees

(2) When any licensed vendor, or any person in his employ and acting on his behalf, is charged with permitting drunkenness or intoxication on the premises of such vendor, and it is proved that any person was drunk or intoxicated on such premises it shall lie on the person charged to prove that the vendor and the persons employed by him took all reasonable steps for preventing drunkenness or intoxication on such premises

Penalty for possession of excisable article in respect of which an offence has been committed.

52. If any person, without lawful authority, has in his possession any quantity of any excisable article, knowing the same to have been unlawfully imported, transported or manufactured, or knowing that the prescribed duty has not been paid thereon, he shall be liable to imprisonment for a term which may extend to [1][six] months, or to fine which may extend to one thousand rupees, or to both

Tinctures of cinchona cardamom or ginger—Whether Excisable articles—Juice drawn from any cocoanut—What is—Abetment what constitutes—Ss 46 52 55 57 (B C V of 1909) —

There was a manufactory of drugs known as the Indian Pharmacy Co, situate in the French Territory at Chandranagore owned by a widow named

1 The word six in s 52 was substituted for the word three by the Bengal Excise (Amendment) Act 1914 (Ben Act VII of 1914) s 18

G Her 2 nephews M and another *i e*, the Accused were actively managing the business They received an order from Messrs B K Paul of Calcutta for 3 cases of tinctures of cinchona, cardamom, ginger and a case of spirits of nitric ether T conveyed the cases to Howrah and on to the go dowos of Paul 3 days after the Accused were seen in the go downs with price lists and thereupon were prosecuted for transporting excisable articles from French Territory to Calcutta under S 46, and of being in possession of excisable articles knowing the same to have been unlawfully imported under Ss 52 and 55 They were sentenced to a fine of 1,000 Rs each

Held on appeal, that Tinctures of cinchona, cardamom or ginger and spirits of nitric ether are not excisable articles

In defining excisable liquor, the meaning of the Legislature was to prevent chemists and vendors of drugs selling intoxicating liquor or otherwise dealing with them as medicinal preparations

The smuggling of drugs prepared in French Territory with French spirits in Bond into British Territory can be prevented by Customs authorities, but because this was not done the Accused are not liable to be punished under the Excise Act

The act of taking an order for foreign goods does not constitute the offence of abetment of their transport though it might be an abetment of their import

Convictions and sentences set aside

Emp Vs Motilal Chander and another—16 C W N 785—15 I C 961.

Penalty for consumption in chemist's shop etc

53 (1) If any chemist, druggist, apothecary or keeper of a *dispensary all us any excisable article which* has not been *l i s f i e* medicated for medicinal purposes to be consumed on his business premises by any person not employed in his business, he shall be liable to imprisonment for a term which may extend to three months, or to fine which may extend to one thousand rupees, or to both

(2) If any person not employed as aforesaid consumes any such excisable article on such premises, he shall be liable to fine which may extend to two hundred rupees

(*e*) fails to produce such licence, permit or pass on the demand of any Officer empowered by the Local Government, by notification,[1] to make such demand, or

(*f*) in any case not provided for in section 46, wilfully contravenes any rule made under section 85 or section 86, or

(*g*) wilfully does any act, in breach of any of the conditions of the licence, permit or pass, for which a penalty is not prescribed elsewhere in this Act,

he shall be liable, in case (*e*), to fine which may extend to two hundred rupees, and in case (*f*) or case (*g*) to fine which may extend to five hundred rupees.

Joint trial of vendor and agent—Misjoinder of charges—Evidence of accomplice—Ss. 46, 54, 56 and Cr. P. C. 239.

Petitioner No. I a licensed vendor was convicted under Ss. 46 and 54 of the Bengal Excise Act, and No. II his agent under S. 56 of the Act and sentenced to a fine of Rs. 100 each or in default to 2 M. H. I. In appeal it was contended that there was a misjoinder of charges, and further that the evidence of the accomplice was not corroborated in any material particular.

Held that a licensed vendor who is punishable by implication under S. 55 can be tried together with his agent who commits the offence, for the case is one of abetment by implication and S. 239 Cr. P. C. clearly allows an abettor to be tried in the same trial as the Principal.

Held further, that the accomplice who was employed as a menial servant and had already been convicted as an instrument used for the conveyance of the liquor and gave his evidence at the trial of the petitioners had entirely ceased to be in the position of an accomplice, inasmuch as he had been convicted of a different offence before the trial of the petitioners and had nothing to gain or lose by the evidence he gave in Court.

Prem Nath Babu v. Emp.—15 Cr. L. J. 692=14 I. C. 607.

Import, export, transport, manufacture, sale or possession by any person on account of another.

55. (1) When any excisable article has been [imported, exported, transported,] manufactured or sold or is possessed by any person on account of any other person, and such other person knows or has reason to believe that such [import, export, transport,] manufacture or sale was, or that such possession

[1] For a notification issued under s. 54 (*a*) for Bengal, see Calcutta Gazette, dated the 13th March, 1912, pt. I, p. 1. For the Bengal Local Government Rules, see Calcutta Gazette, 1910, Vol. I, Pt. VI, p. [illegible].

[2] These words enclosed in square brackets in s. 55 were inserted by the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914), s. 23.

is, on his account, the article shall, for the purposes of this Act, be deemed to have been [1][imported, exported, transported,] manufactured or sold by, or to be in the possession of, such other person.

(2) Nothing in sub-section (1) shall absolve any person who [1][imports, exports, transports,] manufactures, sells or has possession of an excisable article on account of another person from liability to any punishment under this Act for the unlawful [1][import, export, transport,] manufacture, sale or possession of such article

Criminal liability of licensee for acts of servant

56. When any offence punishable under section 46, section 49, section 50, section 51, section 52 or section 54 is committed by any person in the employ and acting on behalf of the holder of a license, permit or pass granted under this Act, such holder shall also be punishable as if he had himself committed the offence, unless he establishes that all due and reasonable precautions were exercised by him to prevent the commission of such offence.

Master whether liable for wrongful act of servant—Removing ganja without Master's permission—Ss 46 56 (B C V of 1909) —

The Accused had an extensive business in Excise shops of which he held a considerable number in 9 Districts including a ganja shop at Koelwar His servant L of Koelwar shop was arrested while attempting to export 2½ seers of Ganja to Vindhyachal I and was prosecuted under S 46 and convicted on his own confession The Accused was also convicted under S 56 of the Act and sentenced to pay a fine of Rs 200 In Revision, the Accused contended that there was no finding that the 2½ seers of ganja came from his Koelwar shop, and secondly that L had acted outside the scope of his employment and was not acting on behalf of the Accused

rather for L's private purposes The expression "on behalf of" connotes some benefit to the persons on whose behalf another person may act

When a servant does anything within the scope of his employment for that purpose, his action will be binding on the master, and the master will be criminally liable for any wrongful act of the servant Conviction set aside

Uttam Chand Vs *Emp*—39 Cal 344—15 I C 1097

Imprisonment under section 55 or section 56

57 No person other than the actual offender shall be punished under section 55 or section 56 with imprisonment, except in default of payment of a fine

Penalty on Excise Officer making vexatious search seizure detention or arrest or refusing duty or being guilty of cowardice

58 If any Excise Officer,—

(*a*) without reasonable grounds of suspicion, searches or causes to be searched, any place, under colour of exercising any power conferred by this Act, or

(*b*) vexatiously and unnecessarily seizes any property of any person on the pretence of seizing or searching for any article liable to confiscation under this Act, or

(*c*) vexatiously and unnecessarily detains, searches or arrests any person, or

(*d*) without lawful excuse, ceases or refuses to perform, or withdraws himself from, the duties of his office, unless expressly allowed to do so in writing by the Collector or unless he has given to his immediate superior two months' notice in writing of his intention to do so, or

(*e*) is guilty of cowardice,

he shall be liable to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred rupees, or to both

Penalty for offences not otherwise punishable

59. If any person is convicted of any act in contravention of any of the provisions of this Act, or of any rule, notification or order made, issued or given under this Act, for which a penalty is not prescribed elsewhere in this Act, he shall be liable to fine which may extend to two hundred rupees.

Penalty for contempt of Court

60 Every proceeding under this Act before a Collector, or before any officer, of such rank as the Local Government may, by notification, [1] prescribe, who is exercising powers of a Collector, shall be deemed to be a "judicial proceeding" within the meaning of section 228 of the Indian Penal Code

Penalty for attempt to commit offence

61 Whoever attempts to commit any offence punishable under this Act shall be liable to the punishment provided for such offence

Enhanced punishment after previous conviction

62 If any person, after having previously been convicted of an offence punishable under section 46,[2] [section 48,] section 52 or section 53, or under similar provisions in any enactment repealed by this Act[3] [or in the Eastern Bengal and Assam Excise Act, 1910]

subsequently commits and is convicted of an offence punishable under any of those sections

he shall be liable to twice the punishment which might be imposed on a first conviction under this Act

[4][Provided that nothing in this section shall prevent any offence which might otherwise have been tried summarily under Chapter XXII of the Code of Criminal Procedure, 1898, from being so tried]

What things are liable to confiscation

63 (1) Whenever an offence has been committed which is punishable under this Act, the excisable article, materials, still, utensil, implement and apparatus in respect of or by means of which such offence has been committed shall be liable to confiscation

and the receptacles, packages and coverings in which any such excisable article as first aforesaid, or any such materials, still, utensil, implement or apparatus as aforesaid, is found,

and the other contents, if any, of such receptacles or packages,

and the animals, carts, vessels, rafts or other conveyances used in carrying the same,

shall likewise be liable to confiscation :

Provided that no animal, cart, vessel, raft or other conveyance as aforesaid shall be liable to confiscation unless the owner thereof is proved to have been implicated in the commission of the offence.

Confiscation by Magistrate or Collector.

64. (1) When, in any case tried by him, the Magistrate decides that anything is liable to confiscation under section 63, he may either order confiscation or give the owner of such thing an option to pay, in lieu of confiscation, such fine as the Magistrate thinks fit.

(2) Whenever anything is liable to confiscation under section 63, and the offender or the person entitled to possession is not known or cannot be found, the case shall be inquired into and determined by the Collector, who may order confiscation :

Provided that no such order shall be made until the expiration of[1] [two months] from the date of seizing the thing intended to be confiscated, or without hearing any person who may claim any right thereto and the evidence (if any) which he produces in support of his claim :

Provided, further, that if the thing in question is liable to speedy and natural decay, or if the Collector is of opinion that its sale would be for the benefit of its owner, the Collector may at any time direct it to be sold; and the provisions of this sub-section shall, as nearly as may be practicable, apply to the net proceeds of the sale.

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1 The words "two months" in the first proviso to s. 64 (2) were substituted for the words "one month" by the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914), s. 23.

Interpretation of Section—Confiscation in owner's absence—S. 64—

S 64 empowers a Court to confiscate the boat in which excisable articles are carried in contravention of the Excise Law. Sound judicial discretion necessitates that such confiscation should not be ordered, unless it is found that the owner of the boat was in some way implicated in the offence under the Excise Law.

Gopal Saha—12 C.W N. 139.

Power to compound offences and to release property liable to confiscation

65. (1) The Collector, or any Excise Officer specially empowered by the Local Government in this behalf, not below the rank of Deputy Collector, [1][or Superintendent of Excise],—

(*a*) may accept from any person whose license, permit or pass is liable to be cancelled or suspended under clause (*a*), clause (*b*) or clause (*c*) of section 42, or who is reasonably suspected of having committed an offence punishable under [2][any section of this Act other than section 58], payment of a sum of money, not exceeding two hundred rupees, in lieu of such cancellation or suspension or by way of composition for such offence, as the case may be; and

(*b*) in any case in which any property has been seized as being liable to confiscation under section 63, may, at any time before the Magistrate has passed an order under section 64, sub section (1), release the property on payment of any sum not exceeding the value thereof as estimated by the Collector or such Excise Officer

(2) When the payments referred to in sub-section (1) have been duly made, the accused person, if in custody, shall be discharged and the property seized (if any) shall be released, and no further proceedings shall be taken against such person or property.

CHAPTER IX—DETECTION, INVESTIGATION AND TRIAL OF OFFENCES AND PROCEDURE

(*b*) a Collector, or

(*c*) any Excise Officer not below such rank as the Local Government may, by notification[1], prescribe,

may, subject to any restrictions prescribed by the Local Government by rule made under section 85,—

(*i*) enter and inspect, at any time by day or night, any place in which any licensed manufacturer carries on the manufacture of, or stores, any excisable articles ; and

(*ii*) enter and inspect, at any time during which the same may be open, any place in which any excisable article is kept for sale by any licensed person ; and

[[2](*ii a*) examine the accounts and registers maintained in any such place as aforesaid ; and]

(*iii*) examine, test, measure or weigh any materials, stills, utensils, implements, apparatus or excisable article found in any such place as aforesaid ; and

(*iv*) examine or test and seize any measures, weights or testing instruments, found in any such place as aforesaid, which he has reason to believe to be false

Power to arrest without warrant, to seize articles liable to confiscation, and to make searches.

67 Any of the following persons, namely,—

(*a*) any officer of the Excise, Police, Salt, Customs, Opium or Land-revenue Department, or

(*b*) any person empowered by the Local Government in this behalf, by notification,

may, subject to any restrictions prescribed by the Local Government by rule made under section 85,—

(*i*) arrest without warrant any person found committing an offence punishable under section 46, section 48, section 52 or section 53 ; and

1 For a notification issued under s 66 (*c*) for Bengal as constituted on the 31st March, 1912, *see* the Bengal Local Statutory Rules and Orders, 1912, Vol I, Pt VI, p 726

2 Clause (11*a*) of s 66 was inserted by the Bengal Excise (Amendment) Act, 1914 (Ben Act VII of 1914), s. 27

(*ii*) seize and detain any article which he has reason to believe to be liable to confiscation under this Act or any other law for the time being in force relating to the excise revenue, and

(*iii*) detain and search any person upon whom, and any vessel, raft, vehicle, animal package, receptacle or covering in or upon which, he may have reasonable cause to suspect any such article to be

Arrest—Whether lawful—S 67 —

An Excise Sub Inspector received information that some persons were distilling liquor in a jungle He went there and found his information true Thereupon he arrested some persons and took them to a neighbouring village and asked for the assistance of a Panchayat Instead of giving assistance, they collected some men and rescued the arrested persons from custody and assaulted the Sub Inspector Held that the arrest was a lawful one

Hridoy Vs Jaganath—4 C W N 245

Assault on Excise officers—Illegal search—Justification—S 67 (B C V of 1909)—

A Deputy Inspector of Excise had information that he would find certain persons in the act of illicitly distilling liquor if he went to a certain village He accordingly went with 2 Sub Inspectors and a large number of peons who actually saw the Accused and their men removing the distilling apparatus But before they had time to enter the house and arrest these persons or to make any search whatever, the Accused sallied out and proceeded to beat the peons The Accused were convicted of rioting under S 147 I P C and sentenced to 2 M R I each and Accused 1 and 3 under S 353 I P C using criminal force to deter a public servant from the discharge of his duty and sentenced to 2 M R. I in addition

It was contended in appeal that there having been no search in accordance with law and the Excise officers not having observed any of the formalities required by law, the resistance offered to them was not unlawful and the conviction under 147 I P C was bad in law, and secondly that the Excise officers were not acting in the exercise of their duty and therefore the conviction under 353 I P C was also bad in law Held, that it was clear that the assault upon these officers was wholly unjustifiable and that the riot was one of a very lawless and serious nature and that the Accused had been very leniently dealt with These officers were acting under S 67 of Act V of 1909 and that before they had time to do anything lawful or unlawful they were wantonly assaulted by the Accused, encouraged and assisted by Accused 1 and 3, that as there was no search it could not be said that there was a search not

in accordance with law and there were no formalities to be observed at the time the assault was committed

Prakash Chandra Kundu Vs Emp—18 C W N 918=23 I C 203

Power to issue warrant of arrest

68 The Collector, [1][or any Magistrate empowered to try offences punishable under this Act,] may issue a warrant for the arrest of any person whom he has reason to believe to have committed [4][or abetted the commission of] any offence punishable under section 46, section 48, section 52 or section 53

Power to issue search warrant

69 If any Collector, or [2][any Magistrate empowered to try offences punishable under this Act,] upon information received, and after such inquiry (if any) as he thinks necessary, has reason to believe that any offence punishable under section 46, section 48, section 52 or section 53 has been, or is likely to be, committed [3][or abetted,]

he may issue a warrant to search for—

any excisable article, material, still, utensil, implement or apparatus in respect of which the alleged offence has been, or is likely to be, committed [3][or abetted] [4][or

any document, which throws or is likely to throw any light on the alleged offence]

Power of Collector or Magistrate to arrest or search without issuing a warrant

[5]69A The Collector, or any Magistrate empowered to try offences punishable under this Act, may at any time—

(*a* arrest, or direct the arrest in his presence of, any person for whose arrest he is competent at the time and in the circumstances to issue a warrant under section 68, or

1 These words enclosed in square brackets in s 68 were inserted by the Bengal Excise (Amendment) Act 1914 (Ben Act VII of 1914) s 26

2 These words enclosed in square brackets in s 69 were substituted for the word Magistrate by the Bengal Excise (Amendment) Act 1914 (Ben Act VII of 1914) s 29 (*a*)

3 The words or abetted in s 69 were inserted by the Bengal Excise (Amendment) Act 1914 (Ben Act VII of 1914) s 29 (*b*)

4 These words enclosed in square brackets in s 69 were added by the Bengal Excise (Amendment) Act 1914 (Ben Act VII of 1914) s 29 (*c*)

5 Section 69A was inserted by the Bengal Excise (Amendment) Act 1914 (Ben Act VII of 1914) s 30

(*b*) search, or direct a search to be made in his presence of, any place for the search of which he is competent to issue a search-warrant under section 69.

Power of Excise Officer other than Collector, to search without a warrant

70. Whenever[1] * * * any Excise Officer not below such rank as the Local Government may, by notification, [2] prescribe, has reason to believe that an offence punishable under section 46, section 48, section 52 or section 53 has been, is being, or is likely to be, committed [3] [or abetted,] and that a search-warrant cannot be obtained without affording the offender an opportunity of escaping or of concealing evidence of the offence,

he may, after recording the grounds of his belief, at any time by day or night enter and search any place, and may seize any thing found therein which he has reason to believe to be liable to confiscation under this Act; and

may detain and search, and if he thinks proper, arrest, any person found in such place whom he has reason to believe to have committed [3] [or abetted] any such offence as aforesaid

Information an aid to Excise Officers.

71. (1) Every Officer of the Police, Salt, Customs, Opium and Land-revenue Departments, and every officer employed by [4] [a body of Port Commissioners,] shall be bound, subject to any rules made under section 85, clause (*l*), to give immediate information to an Excise Officer of all breaches of any of the provisions of this Act which may come to his knowledge,

(2) Every officer referred to in sub section (1), and every village *chaukidar* and *dafadar*, shall be bound, subject to any rules made under section 85, clause (*l*), to give reasonable aid to any

Excise Officer in carrying out the provisions of this Act, or of any rule, notification or order made, issued or given under this Act, upon request made by such Officer.

Duty of owners and occupiers of land and other persons to give notice of an licensed manufacture

72. Whenever any excisable article is manufactured, or any hemp plant (*Cannabis sativa*) is cultivated, or any portion of the hemp plant (*Cannabis sativa*) from which an intoxicating drug can be manufactured or produced is collected, on any land, in contravention of this Act,

all owners and occupiers of such land, and their agents, and all *panchayets*, village-headmen, *patwaris*, *sarbarakars*, *chaukidars* and *dafadars* of the village,

shall, in the absence of reasonable excuse, be bound to give notice of the fact to a Magistrate or an officer of the Excise, Police or Land revenue Department, as soon as the fact comes to their knowledge

What Excise Officers may investigate offences.

73. (1) A Collector may, without the order of a Magistrate, investigate any offence punishable under this Act which a Court having jurisdiction over the local area within the limits of the Collector's jurisdiction would have power to inquire into or try under the provisions of Chapter XV of the Code of Criminal Procedure, 1898, relating to the place of inquiry or trial.

(2) Any other Excise Officer specially empowered[1] in this behalf by the Local Government in respect of all or any specified class of offences punishable under this Act may, without the order of a Magistrate, investigate any such offence which a Court having jurisdiction over the local area to which such Officer is appointed would have power to inquire into or try under the aforesaid provisions

Powers and duties of Excise Officer investigating offences

74. (1) Any Collector, or any Excise Officer empowered under section 73, sub section (2), may, after recording in writing his reason for suspecting

1 For a notification issued under s 73(2) for Bengal as constituted on the 31st March, 1912 *see* the Bengal Local Statutory Rules and Orders 1912, Vol I, Pt VI, p 727

the commission of an offence which he is empowered to investigate, exercise—

(*a*) any of the powers conferred upon a Police Officer making an investigation, or upon an officer in charge of a police-station, by section 160 to 171 of the Code of Criminal Procedure, 1898, and,

(*b*) as regards offences punishable under Section 46, Section 48, section 52 or section 53 of this Act—any of the powers conferred upon Police Officers in respect of cognizable offences by clause *first* of sub-section (1) of section 54 and by section 56 of the said Code;

and the said portions of the said Code shall apply accordingly, subject to any restrictions or modifications prescribed by the Local Government by rule made under section 85, clause (*o*).

(2) Subject to any restrictions prescribed [1] by the Local Government, a Collector, or an Excise Officer empowered under section 73, sub-section (2), may, without reference to a Magistrate, and for reasons to be recorded by him in writing, stop further proceedings against any person concerned, or supposed to be concerned, in any offence which he or any Excise Officer subordinate to him has investigated.

(3) For the purposes of section 156 of the Code of Criminal Procedure, 1898, the area to which an Excise Officer empowered under section 73, sub-section (2), is appointed shall be deemed to be a police-station, and such Officer shall be deemed to be the officer in charge of such station.

(4) As soon as an investigation by a Collector or by an Excise Officer empowered under section 73, sub section (2), has been completed, if it appears that there is sufficient evidence to justify the forwarding of the accused to a Magistrate, the investigating officer, unless he proceeds under sub-section (2) of this section or under section 65 of this Act, shall submit a report (which shall, for the purposes of section 190 of the Code of Criminal Procedure, 1898, be deemed to be a police-report) to a Magistrate having jurisdiction

[1] For orders made under section 73 (2) for the Bengal as constituted on the 31st March 1912, see the Bengal Local Statutory Rules and Orders, 1912, Vol. I, Pt. VI, p. 1[illegible].

to inquire into or try the case and empowered to take cognizance of offences on police reports

Security and bail

75 (1) Whenever a Collector issues a warrant under this Act for the arrest of any person,

he shall direct, by endorsemant on the warrant, that, if such person executes a bond with sufficient sureties for his attendance, before the Collector or before an Excise Officer empowered under section 73, sub section (2), to investigate the case, at a specified time and thereafter until otherwise directed by the Collector or an Excise Officer empowered as aforesaid, the officer to whom the warrant is directed shall take such security, and shall release such person from custody

(2) The endorsement shall state—

(*a*) the number of sureties,

(*b*) the amount in which they, and the person for whose arrest the warrant is issued, are respectively to be bound, and

(*c*) the time at which such person is to attend as aforesaid

(3) Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Collector or to an Excise Officer empowered as aforesaid

(4) Whenever any peron is arrested under this Act, otherwise than under a warrant, and is prepared to give bail, he shall be *released on bail, or, at the discretion of the officer releasing him, on* his own bond

(5) Any Excise Officer not below such rank as the Local Government may, by notification,[1] prescribe, may release persons on bail or on their own bond

(6) Bonds taken under this section from persons arrested otherwise than under warrant shall bind such persons to appear before the Collector or an Excise Officer empowered under section 73, sub section (2), to investigate the case.

1 For a notification issued under s 75 (5) for Bengal as constituted on the 31st March 1912 —*see* the Bengal Local Statutory Rules and Orders 1912 Vol I Pt VI, p 728

(7) The provisions of sections 498 to 502, 513, 514 and 515 of the Code of Criminal Procedure, 1898, shall apply, so far as may be, in every case in which bail is accepted or a bond taken under this section

Production of articles seized and persons arrested.

76 (1) Articles seized under the warrant of the Collector, and, unless security for their appearence before the Collector be taken, persons arrested under such a warrant, shall be produced before the Collector

(2) Articles seized under section 66, section 67 or section 69, and persons arrested under this Act by persons or officers not having authority to release arrested persons on bail or on their own bond, shall be produced before or forwarded to—

(*a*) the Collector or an Excise Officer empowered under section 73, sub section (2), to investigate the case, or

(*b*) the nearest Excise Officer who has authority to release arrested persons on bail or on their own bond, or

(*c*) the officer in charge of the nearest police station, whoever is nearer

(3) When a person arrested is produced before an Excise Officer who has authority to release arrested persons on bail or on their own bond, or before an officer in charge of a police station, such officer shall forward such person to or take security for his appearance before, the Collector or the Excise Officer empowered under section 73 sub section (2) to investigate the case

(4) When any articles seized cannot conveniently be conveyed before an officer referred to in sub section (1) or sub section (2), as the case may be, the person making the seizure shall dispose of them in some place of safety and forthwith report the seizure to such an officer

Custody of articles seized

77 (1) All officers in charge of police stations shall take charge of and keep in safe custody, pending the orders of a Magistrate, or of the Collector, or of an Excise Officer empowered under section 73 sub section (2), to

investigate the case, all articles seized under this Act which may be delivered to them; and shall allow any Excise Officer who may accompany such articles to the police-station, or who may be deputed for the purpose by an official superior, to affix his seal to such articles and to take samples of and from them

(2) All samples so taken shall be sealed with the seal of the officer in charge of the police-station.

Reports of arrests seizures and searches

78 When any Excise Officer below the rank of Collector, or any officer in charge of a police station, makes, or receives information of, any arrest, seizure or search under this Act, he shall, within twenty-four hours thereafter, make a full report of all the particulars of the arrest, seizure or search, or of the information received, to the Collector, and to the Excise Officer (if any) empowered under section 73, sub-section (2), within the local limits of whose jurisdiction the arrest, seizure or search was made

Execution of Collector's warrant

79 Any warrant issued by a Collector may be executed by any officer selected by the Collector for the purpose

Provided that no warrant issued by the Collector for execution in that part of the Calcutta district in which the administration of the Police is vested in the Commissioner of Police shall be executed by any Police Officer who is subordinate to the said Commissioner, unless it be endorsed by a Police Officer duly empowered in that behalf under section 7, clause (*d*).

Maximum period of detention

80. (1) No person arrested under this Act shall be detained in custody for a longer period than under all the circumstances of the case is reasonable, and such period shall not exceed twenty four hours, exclusive of the time necessary for the journey from the place of arrest to the place where a Collector or an Excise Officer empowered under section 73, (2), to investigate the case may be, and thence to the Court of a Magistrate having jurisdiction to inquire into or try the case.

(2) A Magistrate to whom an accused person is forwarded under section 167 of the Code of Criminal Procedure, 1898, by a

Collector or an Excise Officer empowered under section 73, sub-section (2), may exercise the powers conferred upon a Magistrate by the said section 167.

Application of certain provisions of the Code of Criminal Procedure, 1898

81. (1) Save as is in this Act otherwise expressly provided, the provisions of the Code of Criminal Procedure, 1898, relating to arrests, detentions in custody, searches, summonses, warrants of arrest, search-warrants and the production of persons arrested, shall apply, so far as may be, to arrests, detentions and searches made, summonses and warrants issued, and the production of persons arrested under this Act.

(2) For the purposes of the said provisions of the said Code, a Collector shall be deemed to be a Court.

(3) Officers to whom a Collector's warrant is directed or endorsed, and officers (other than Collectors) making arrests, searches or seizures under this Act, shall, for the purposes of the said provisions of the said Code, be deemed to be Police Officers.

Magistrates having jurisdiction to try offences

82. No Magistrate other than—

(*a*) a Presidency Magistrate, or

(*b*) a Magistrate whose powers are not less than those of a Magistrate of the second class, or

(*c*) a Magistrate of the third class, specially empowered by the District Magistrate in this behalf,

shall try any offence punishable under this Act.

Initiation of certain prosecutions

83. No Magistrate shall take cognizance of an offence referred to—

(*a*) in section 46, section 48, section 52 or section 53, except on his own knowledge or suspicion, or on the complaint or report of an Excise Officer or an officer empowered in this behalf by the Local Government, or

(*b*) in section 54, section 58, clause (*f*) or clause (*e*), or section 59, except on the complaint or report of the Collector or an Excise Officer authorized by the Collector in this behalf.

Complaint of Police officer of an offence under S 46—Whether legal—Bengal Excise Act—(V B C of 1909)—Ss 46 83 (a)—

The petitioner was convicted and sentenced under S 46 of the Bengal Excise Act Cl (a) of S 83 lays down that no Magistrate shall take cognisance of an offence referred to in S 46 except on his own knowledge or suspicion or report of an Excise officer or an officer empowered in this behalf by the Local Government Now, the only complaint or report is the document signed by Police Sub Inspector Mr Mukerjee His name appears in the first column as the name of the complainant It may be that he has been authorised by his superior officers to make this complaint or report, but we see no reason for saying that the case was not instituted by the report or complaint made by him or that the Magistrate did not take cognisance of the case on that report or complaint The Sub Inspector is not an Excise officer and the only question is "whether he was an officer empowered in this behalf by the Local Government" Turning to Chapter X of Vol II of the Excise Manual we find a number of Rules Rule 18 refers to S 83 (a) and states that the officers empowered by the Local Government are Police officers not below the rank of officers in charge of a Police Station In the present case Sub Inspector Mukerjee was an officer below the rank of an officer in charge of a Police Station He was a Sub Inspector attached to the Police Station but at all material times he appears to have been subordinate to Sub Inspector Mahomed Hussain who was the officer in charge of the Station The mere fact that both officers were mere Sub Inspectors is not sufficient The Magistrate's proceedings are void under Cl (p) of S 530 of the Cr P C and the defect is not a mere irregularity to which S 537 Cr P C applied, as that Section presupposes a trial by a Court of competent jurisdiction

Jalaluddin Peshawari Vs Emp —(C) 47 I C 813

Bar to transfer of trial on application of accused

84 The provisions of section 191 of the Code of Criminal Procedure, 1898, shall not apply in any case in which a Magistrate (not being the Collector) takes cognizance of an offence under this Act on the report of any officer referred to in clause (*a*) or clause (*b*) of section 83

CHAPTER X—MISCELLANEOUS

Power of Local Government to make rules

85 (1) The Local Government may make rules[1] to carry out the objects of this Act or any other law for the time being in force relating to the excise-revenue

1 For rules made under s 85 for Bengal as constituted on the 31st March 1912 *see* the Bengal Local Statutory Rules and Orders, 1912 Vol I, Pt VI p 728

(2) In particular, and without prejudice to the generality of the foregoing provision, the Local Government may make rules—

(*a*) for prescribing the powers and duties of officers of the Excise Department ,

(*b*) for regulating the delegation of any powers by [1] the Commissioner of a Division, the Excise Commissioner or Collectors under section 7, clause (*g*) ,

(*c*) for declaring in what cases or classes of cases and to what authorities appeals shall lie from orders whether original or appellate, passed under this Act or under any rule made hereunder, and for prescribing the time and manner for presenting, and the procedure for dealing with, such appeals ,

(*d*) for regulating the import, export or transport of any excisable article ,

(*e*) for regulating the periods for which licenses for the wholesale or retail vend of any excisable article may be granted, and the number of such licenses which may be granted for any local area ,

(*f*) for prohibiting the grant of licenses for the retail sale of any excisable article at any place or within any local area described in the rules, or for defining the places in the vicinity of which shops for the retail sale of any excisable article shall not ordinarily be licensed ,

(*g*) for prohibiting the grant to specified classes of persons of licenses for the retail sale of any excisable article ,

(*h*) for declaring, either generally, or in respect of areas described in the rules the persons or classes of persons to whom any excisable article may or may not be sold ,

(*i*) for regulating the procedure to be followed and prescribing the matters to be ascertained before any license for the wholesale or retail vend of any excisable article is granted for a locality ,

[1] The words "the Board" in clause (*b*) of s. 6 were repealed by the Ben (Amendment) Act, 1914 (Ben. Act VII of 1914), s. 5 (*b*), and are omitted.

(*k*) for restricting the exercise of any of the powers conferred by [1] [section 65, clause (*a*), and] sections 66 and 67;

(*l*) for declaring the Excise Officers to whom, and the manner in which, information or aid should be given under section 71;

(*m*) for the grant of expenses to witnesses;

(*n*) for the grant of compensation for loss of time to persons released by any Excise Officer under this Act on the ground that they have been improperly arrested, and to persons charged before a Magistrate with offences punishable under this Act and subsequently acquitted, and

( ) for prescribing restrictions or modifications in the application to Excise Officers of the provisions of the Code of Criminal Procedure, 1898, relating to powers of Police Officers which are referred to in section 74, sub-section (1), of this Act.

(3) The powers conferred by this section for making rules are subject to the condition that the rules be made after previous publication:

Provided that any such rules may be made without previous publication if the Local Government considers that they should be brought into force at once

Further power of Local Government to make rules.

86 The [2] [Local Government] may make rules[3]—

(1) for regulating the manufacture, supply or storage of any excisable article, and in particular, and without prejudice to the generality of this provision, may make rules for regulating—

(*a*) the establishment, inspection, supervision, management and control of any place for the manufacture, supply or storage of

1 The words and figures "section 65, clause (*a*), and" in clause (*k*) of s. 85 were inserted by the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914), s. 3.

2 The words "Local Government" in s. 86 were substituted for the word "Board" by the Bengal Excise (Amendment) Act, 1914 (Ben. Act VII of 1914), s. 5(2).

3 For rules made under s. 86 for Bengal as constituted on the 31st March, 1912, *see* the Bengal Local Statutory Rules and Orders, 1912, Vol. I, Pt. VI, Pp. 729, 730.

any excisable article, and the provision and maintenance of fittings, implements and apparatus therein;

(*b*) the bottling of liquor for purposes of sale;

(*c*) the cultivation of the hemp plant (*Cannabis sativa*);

(*d*) the collection of portions of the hemp plant (*Cannabis sativa*) from which intoxicating drugs can be manufactured or produced, and the manufacture or production of intoxicating drugs therefrom;

(*e*) the tapping of *tari*-producing trees and the drawing of *tari* from trees;

(*f*) the marking of *tari*-producing trees in areas notified under section 14, sub section (1), and the maintenance of such marks;

(2) for fixing the strength, price or quantity in excess of or below which any excisable article shall not be supplied or sold, and the quantity in excess of which denatured spirit shall not be possessed, and for prescribing a standard of quality for any excisable article;

(3) for declaring how spirit manufactured in British India shall be denatured;

(4) for causing spirit so manufactured to be denatured through the agency or under the supervision of Government officers;

(5) for ascertaining whether any spirit so manufactured has been denatured;

(6) for regulating the deposit of any excisable article in a warehouse established, authorized or continued under this Act, and the removal of any excisable article from any such warehouse or from any distillery or brewery,

(7) for prescribing the scale of fees or the manner of fixing the fees payable in respect of any exclusive privilege granted under section 22 or any license, permit or pass granted under this Act, or in respect of the storing of any excisable article,

(8) for regulating the time, place and manner of payment of such fees;

(9) for prescribing the restrictions under which or the conditions on which any license, permit or pass may be granted, and in particular, and without prejudice to the generality of this provision, may make rules for—

(*i*) prohibiting the admixture with any excisable article of any article deemed to be noxious or objectionable,

(*ii*) regulating or prohibiting the reduction of liquor by a licensed manufacturer or licensed vendor from a higher to a lower strength,

(*iii*) prescribing the nature and regulating the arrangement of the premises in which any excisable article may be sold, and prescribing the notices to be exposed at such premises,

(*iv*) prohibiting or regulating the employment by the licensee of any person or class of persons to assist him in his business,

(*v*) prohibiting the sale of any excisable article except for cash,

(*vi*) prescribing the days and hours during which any licensed premises may or may not be kept open, and providing for the closing of such premises on special occasions,

(*vii*) prescribing the accounts to be maintained and the returns to be submitted by licensees, and

(*viii*) regulating the transfer of licenses,

(10) for prescribing the particulars to be contained in licenses, permits or passes granted under this Act,

(11) for the payment of compensation to licensees whose premises are closed under section 26 or under any rule made under sub-clause (*vi*) of clause (9) of this section,

(12) for prescribing the time, place and manner of levying duty on excisable articles,

(13) for providing for the destruction or other disposal of any excisable article deemed to be unfit for use, and

(14) for regulating the disposal of things confiscated under this Act.

Explanation.—Fees may be prescribed under clause (7) of this section at different rates for different classes of exclusive privileges, licenses, permits, passes or storage, and for different areas.

87. *(Powers of Board exercisable from time to time.) Rep by the Bengal Excise (Amendment) Act 1914 (Ben Act VII of (1914). s 5 (d)*

Publication and effect of rules and notifications.

88. All rules made, and notifications issued, under this Act shall be published in the *Calcutta Gazette*, and on such publication shall have effect as if enacted in this Act

Recovery of dues

89. (1) The following moneys, namely,—

(*a*) all excise-revenue,

(*b*) any loss that may accrue when a grant has been taken under management by the Collector or transferred by him under section 45, and

(*c*) all amounts due to the Government by any person on account of any contract relating to the excise-revenue,

may be recovered from the person primarily liable to pay the same, or from his surety (if any), by distress and sale of his movable property, or by the process prescribed for the recovery of arrears of revenue.

(2) When a grant has been taken under management by the Collector, or has been transferred by him, under section 45, the Collector may recover, in any manner authorized by sub-section (1), any money due to the grantee by any lessee or assignee.

(3) When any money is due, in respect of an exclusive privilege to a grantee referred to in section 23, from any person holding under him,

such grantee may apply to the Collector, and the Collector may recover such money on his behalf in either of the ways provided by sub section (1) :

Provided that nothing in this sub-section shall affect the right of any such grantee to recover any such money by civil suit.

Power of Local Government to exempt excisable articles from provisions of Act

90. The Local Government may, by notification[1], either wholly or partially, and subject to such conditions (if any) as it may think fit to prescribe, exempt any excisable article from all or any of the provisions of this Act, either throughout Bengal or in any specified local area, or for any specified period or occasion or as regards any specified class of persons.

Bar to certain suits.

91. No suit shall lie in any Civil Court against the Secretary of State for India in Council or any Excise Officer for damages for any act in good faith done or ordered to be done in pursuance of this Act or any other law for the time being in force relating to the excise-revenue.

Limitation of suits and prosecutions.

92. No Civil Court shall try any suit against the Secretary of State for India in Council in respect of anything done, or alleged to have been done, in pursuance of this Act,

and, except with the previous sanction of the Local Government, no Magistrate shall take cognizance of any charge made against any Excise Officer under this Act or any other law relating to the excise-revenue, or made against any other person under this Act,

unless the suit or prosecution is instituted within six months after the date of the act complained of

Bar to application of section 261 of the Bengal Municipal Act, 1884

[2]92A. Section 261 of the Bengal Municipal Act, 1884, shall not apply to—

(*a*) any distillery, brewery, warehouse or other place of storage licensed, established, authorized or continued under this Act, or

(*b*) the premises used for the manufacture or sale of any excisable article by the holder of a license granted under this Act for such manufacture or sale.

Repeal

93. The enactments mentioned in the first column of the Schedule are hereby repealed to the extent specified in the third column thereof.

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1 For a notification issued under s. 90 for Bengal as constituted on the 31st March, 1912, *see* the Bengal Local Statutory Rules and Orders, 1912, Vol. I, Pt. VI, p. 730.

2 Section 92A was inserted by the Bengal Excise (Amendment) Act, 1914 (Bengal Act VII of 1914), s. 34.

(The Schedule.)

THE SCHEDULE.

[ENACTMENTS REPEALED.]

(See section 93.)

1	2	3
Number and year.	Short title.	Extent of repeal.
Part I.—Acts of the Governor General of India in Council.		
XVI of 1863 ...	The Excise (Spirits) Act, 1863	So much as has not been repealed
IX of 1885 ...	The Excise and Sea Customs Law Amendment Act, 1885.	In the title, the words and figures "the Bengal Excise Act, 1878, and" In the preamble the words and figures "section 18 of the Bengal Excise Act, 1878, and" Section 3.
XIII of 1890 ...	The Excise (Malt Liquors) Act 1890	Sections 6, 7 and 8, and the heading prefixed thereto.
VIII of 1894 ...	The Indian Tariff Act, 1894.	Section 6
XII of 1896 ...	The Excise Act	So much as has not been repealed
V of 1897 ...	The Amendment Act, 1897	So much of the second Schedule as relates to Bengal Act I of 1883 (Excise).
VII of 1906 ...	The Excise (Amendment) Act, 1906	The whole
Part II.—Bengal Acts.		
VII of 1878 ...	The Bengal Excise and Licensing Act, 1878	So much as has not been repealed.
IV of 1881 ..	The Bengal Excise Amendment Act, 1881.	
I of 1883 ..	The Bengal Excise Amendment Act, 1883	
II of 1903 ..	The Bengal Excise and Licensing (Amendment) Act, 1903.	The whole.

PUNJAB ACT NO. I OF 1914.

THE PUNJAB EXCISE ACT, 1914.

THE PUNJAB EXCISE ACT 1914.

(I OF 1914)

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THE SCHEDULE

Punjab Act I of 1914.

PASSED BY THE LIEUTENANT-GOVERNOR OF THE PUNJAB IN COUNCIL.

Received the assent of His Honour the Lieutenant-Governor on the 6th November 1913 and that of His Excellency the Viceroy and Governor-General on the 12th December 1913, the Governor-General's assent was first published on the 16th January 1914.

WHEREAS it is expedient to consolidate and amend the law in the Punjab relating to the import, export, transport, manufacture, sale and possession of intoxicating liquor and of intoxicating drugs; It is hereby enacted as follows:—

CHAPTER I

PRELIMINARY AND DEFINITIONS.

Short title.

1. (1) This Act may be called the Punjab Excise Act, 1914; and

Extent.

(2) It extends to the whole of the Punjab.

Commencement.

(3) It shall come into force on such date as the Local Government may by notification direct

Repeal of enactments.

2. The enactments mentioned in the Schedule are repealed to the extent specified in the fourth column thereof.

Definitions.

3. In this Act, and the rules made under it, unless there is something repugnant in the subject or context,—

"Beer".

(1) "beer" includes ale, porter, stout, and all other fermented liquors made from malt;

"bottle."

(2) to "bottle" means to transfer liquor from a cask or other vessel to a bottle, jar, flask, or similar receptacle, whether any process of manufacture be employed or not, and bottling includes rebottling;

"Collector."

(3) "Collector" includes any revenue officer in independent charge of a district and any official appointed by the Local Government to discharge, throughout any specified local area, the functions of a Collector under this Act;

"Commissioner."

(4) "Commissioner" means the chief officer in charge of the revenue administration of a division;

"denatured."

(5) "denatured" means effectually and permanently rendered unfit for human consumption;

"excisable article."

(6) "excisable article" means and includes any liquor or intoxicating drug as defined by or under this Act;

"Excise Commissioner."

(7) "Excise Commissioner" means the officer appointed, by the Local Government under section 9;

"excise officer."

(8) "excise officer" means any officer or person appointed, or invested with powers, under this Act;

"excise revenue."

(9) "excise revenue" means revenue derived or derivable from any payment, duty, fee, tax, confiscation or fine, imposed or ordered under the provisions of this Act, or of any other law for the time being in force relating to liquor or intoxicating drugs, but does not include a fine imposed by a court of law;

"export."

(10) "export" means to take out of the Punjab;

"Financial Commissioner"

(11) "Financial Commissioner" shall, when there are more Financial Commissioners than one, be construed as meaning one or more of the Financial Commissioners;

"import."

(12) "import" means to bring into the Punjab;

"intoxicating drug"

(13) "intoxicating drug" includes—

(*a*) *charas*, *bhang*, *ganja* and all other preparations of the hemp plant (*cannabis sativa*) as well as all portions of the said plant from which such preparations are made. The Local Government may, by notification, declare what shall be deemed to be *charas*, *bhang*, or *ganja*,

(*b*) cocaine and all other preparations or derivatives of the coca plant (*erythroxylon coca*) and all portions of the said plant from which such preparations are made;

(*c*) any other intoxicating drink or substance which the Local Government may by notification specify in this behalf;

(*d*) every preparation or admixture of any article mentioned in clauses (*a*), (*b*) and (*c*) above, but does not include opium or anything which is included in opium as defined in the Opium Act, India Act I of 1878;

"liquor"

(14) "liquor" means intoxicating liquor, and includes all liquid consisting of or containing alcohol; also any substance which the Local Government may by notification declare to be liquor for the purposes of this Act,

every process for the rectification, reduction, flavouring, blending or colouring of liquor;

'place'

(17) "place" includes a building, shop, tent, enclosure, booth, vehicle, vessel, boat and raft;

'sale'

(18) expressions referring to "sale" include any transfer otherwise than by way of gift;

'spirit'

(19) "spirit" means any liquor containing alcohol obtained by distillation, whether denatured or not;

'tari'

(20) "tari" means fermented or unfermented juice drawn from any kind of palm tree,

'transport'

(21) "transport" means to move from one place to another within the Punjab

Country liquor and foreign liquor

4 The Local Government may, with the previous sanction of the Governor General in Council, by notification declare what, for the purposes of this Act or any portion thereof, shall be deemed to be "country liquor" and "foreign liquor"

Power of Local Government to declare limit of sale by retail and by wholesale

5 The Local Government may by notification declare with respect either to the whole of the Punjab or to any local area comprised therein, and as regards purchasers generally or any specified class of purchasers, and generally or for any specified occasion, the maximum or minimum quantity or both of any excisable article which for the purposes of this Act may be sold by retail and by wholesale

Power to limit application of notifications permits &c made under this Act

6 Where under this Act any notification is made, any power conferred, any appointment made or any license, pass or permit granted, it shall be lawful to direct—

(*a*) that it shall apply to the whole of the Punjab or to any specified local area or areas,

(*b*) that it shall apply to all or any specified excisable article or articles or classes thereof,

(*c*) that it shall apply to all or any class or classes of persons or officers,

(*d*) that it shall be in force only for some special period or occasion

Saving of enactment

7 Save as provided by the Schedule, nothing contained in this Act shall affect the provisions of the Sea Customs Act, 1878, the Cantonments Act, 1910, or the Indian Tariff Act, 1894, or any rule or order made thereunder

CHAPTER II —ESTABLISHMENT AND CONTROL

Superintendence and control of the excise administration and excise officers

8 (*a*) Subject to the control of the Local Government and unless the Local Government shall by notification otherwise direct, the general superintendence and administration of all matters relating to excise shall vest in the Financial Commissioner.

(*b*) Subject to the general superintendence and control of the Financial Commissioner and unless the Local Government shall by notification otherwise direct, the Commissioner shall control all other excise officers in his division

(*c*) Subject as aforesaid and to the control of the Commissioner and unless the Local Government shall by notification otherwise direct, the Collector shall control all other excise officers in his district

Excise Commissioner

9 The Local Government may by notification appoint an Excise Commissioner and, subject to such conditions and restrictions as it may deem fit, may invest him with all or any of the powers conferred on the Financial Commissioner by this Act

Other classes of excise officers

10. (*a*) There shall be such other classes of excise officers as the Local Government may by notification declare and the Local Government may appoint as many persons as it deems fit to be excise officers of these classes.

Their Powers.

(*b*) The Local Government shall by notification [illegible] what powers under this Act shall be exercised by excise

Mode of conferring powers

(*c*) In conferring powers under this Act the Local Government may empower persons by name or in virtue of their office or classes of officials generally by their official titles.

Power to invest persons with special powers under this Act

11. The Local Government may by notification invest any person, not being an excise officer, with power to perform all or any of the functions of an excise officer under this Act, and such person shall in the exercise of these functions be deemed to be an excise officer.

Local limits of jurisdiction

12. The jurisdiction of the Financial Commissioner and of the Excise Commissioner shall extend to the Punjab, the jurisdiction of Commissioners shall extend to their divisions, and the jurisdiction of Collectors and other excise officers shall, unless the Local Government shall otherwise direct, extend to the districts in which they are for the time being employed.

Delegation

13 (*a*) The Local Government may by notification delegate to the Financial Commissioner or Commissioner all or any of its powers under this Act, except the powers conferred by sections 14, 21, 22, 31, 56 and 58 of this Act.

(*b*) The Local Government may by notification permit the delegation by the Financial Commissioner, Commissioner or Collector to any person or class of persons specified in such notification of any powers conferred by this Act or exercised in respect of excise revenue under any Act for the time being in force.

Appeal

14. An appeal shall lie from an original or appellate order of an excise officer in such cases or classes of cases and to such authority as the Local Government shall by notification declare.

Revision

15. (*a*) The Financial Commissioner may at any time revise any order passed by any excise officer subordinate to him.

(*b*) A Commissioner or Collector may call for the record of any case pending before, or disposed of by, any excise officer

(*a*) establish a distillery in which spirit may be manufactured under a license granted under section 20,

(*b*) discontinue any distillery so established,

(*c*) license the construction and working of a distillery or brewery;

(*d*) making rules regarding—

(1) the granting of licenses for distilleries, stills or breweries,

(2) the security to be deposited by the licensee of a distillery or brewery,

(3) the period for which the license shall be granted,

(4) the inspection and examination of such distillery or brewery and the warehouses connected therewith and of the spirit or fermented liquor made and stored therein,

(5) the management and working of the distillery or brewery,

(6) the form of accounts to be maintained and the returns to be submitted by the licensee,

(7) the up keep of buildings and plant,

(8) the size and description of stills, and other plant,

(9) the manufacture, storing and passing out of spirit, and the contents of passes,

(10) the prices to be charged by the licensee,

(11) any other matters connected with the working of distilleries or breweries

Establishment or licensing of warehouses.

22. The Financial Commissioner, subject to such restrictions or conditions as the Local Government may impose, may—

(*a*) establish or license a warehouse wherein any excisable article may be deposited and kept without payment of duty;

(*b*) discontinue any warehouse so established

Provided, further, that on such conditions as may be determined by the Financial Commissioner, a pass granted under the excise law in force in another province may be deemed to be a pass granted under this Act

Grant of passes for import export and transport

19 Passes for the import, export or transport of excisable articles may be granted by the Collector

Provided that passes for the import and export of such excisable articles as the Financial Commissioner may from time to time determine shall be granted only by the Financial Commissioner

CHAPTER IV

MANUFACTURE, POSSESSION AND SALE

A — Manufacture

Manufacture of excisable articles prohibited except under the provisions of this Act

20 (1) (*a*) No excisable article shall be manufactured or collected,

(*b*) no hemp plant or coca plant shall be cultivated,

(*c*) no tari producing tree shall be tapped,

(*d*) no tari shall be drawn from any tree, and

(*e*) no person shall use, keep or have in his possession any materials, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing any excisable article other than tari,

except under the authority and subject to the terms and conditions of a license granted in that behalf by the Collector

(2) No distillery or brewery shall be constructed or worked except under the authority and subject to the terms and conditions of a license granted in that behalf by the Financial Commissioner under section 21

Establishment or licensing of distilleries and breweries

21 The Financial Commissioner, subject to such restrictions or conditions as the Local Government may impose, may—

(*a*) establish a distillery in which spirit may be manufactured under a license granted under section 20;

(*b*) discontinue any distillery so established;

(*c*) license the construction and working of a distillery or brewery;

(*d*) making rules regarding—

(1) the granting of licenses for distilleries, stills or breweries;

(2) the security to be deposited by the licensee of a distillery or brewery;

(3) the period for which the license shall be granted;

(4) the inspection and examination of such distillery or brewery and the warehouses connected therewith and of the spirit or fermented liquor made and stored therein,

(5) the management and working of the distillery or brewery,

(6) the form of accounts to be maintained and the returns to be submitted by the licensee,

(7) the up-keep of buildings and plant;

(8) the size and description of stills, and other plant;

(9) the manufacture, storing and passing out of spirit, and the contents of passes,

(10) the prices to be charged by the licensee,

(11) any other matters connected with the working of distilleries or breweries

Establishment or licensing of warehouses.

22. The Financial Commissioner, subject to such restrictions or conditions as the Local Government may impose, may—

(*a*) establish or license a warehouse wherein any excisable article may be deposited and kept without payment of duty;

(*b*) discontinue any warehouse so established.

Removal of excisable article from distillery, etc.

23. No excisable article shall be removed from any distillery, brewery, warehouse, or other place of storage established or licensed under this Act, unless the duty (if any) imposed under section 31 has been paid or a bond has been executed for the payment thereof.

B.—Possession.

Possession of excisable articles

24. (1) No person shall in his possession any quantity of any excisable article in excess of such quantity as the Local Government has, under section 5, declared to be the limit of retail sale, except under the authority and in accordance with the terms and conditions of—

(*a*) a license for the manufacture, sale or supply of such article, or

(*b*) in the case of intoxicating drugs, a license for the cultivation or collection of the plants from which such drugs were produced, or

(*c*) a permit granted by the Collector in that behalf.

Exceptions

(2) Sub section (1) shall not apply to—

(*a*) any excisable article in the possession of any excise officer, common carrier or warehouseman as such, or

(*b*) any foreign liquor which has been purchased by any person for his *bona fide* private consumption

(3) A licensed vendor shall not have in his possession at any place, other than that authorized by his license, any quantity of any excisable article in excess of such quantity as the Local Government has under section 5 declared to be the limit of sale by retail, except under a permit granted by the Collector in that behalf.

Prohibition and restriction of possession of excisable articles in certain cases.

(4) Notwithstanding anything contained in the foregoing sub-sections, the Local Government may by notification prohibit the possession of any excisable article, or restrict such possession by such conditions as it may prescribe.

Prohibition of possession of excisable article unlawfully manufactured imported &c

25. No person shall have in his possession any quantity of any excisable article, knowing the same to have been unlawfully imported, transported, manufactured, cultivated or collected, or knowing the prescribed duty not to have been paid thereon.

C —Sale.

Sale of excisable articles.

26 No liquor shall be bottled for sale and no excisable article shall be sold, except under the authority and subject to the terms and conditions of a license granted in that behalf, provided that—

(1) a person licensed under section 20 to cultivate the hemp or coca plant may sell without a license those portions of the plant from which any intoxicating drug can be manufactured to any person licensed under this Act to deal in the same or to any officer whom the Financial Commissioner may appoint in this behalf,

(2) a person having the right to the tari drawn from any tree may sell the same without a license to a person licensed to manufacture or sell tari under this Act,

(3) on such conditions as the Financial Commissioner may determine a license for sale under the excise law for the time being in force in other parts of British India may be deemed to be a license granted in that behalf under this Act,

(4) nothing in this section applies to the sale of any foreign liquor lawfully procured by any person for his private use and sold by him or on his behalf or on behalf of his representatives in interest upon his quitting a station or after his decease

Grant of lease of manufacture &c.

27 (1) The Local Government may lease to any person, on such conditions and for such period as it may deem fit, the right—

(*i*) of manufacturing or of supplying by wholesale, or of both, or

(*ii*) of selling by wholesale or by retail, or

(*iii*) of manufacturing or of supplying by wholesale, or of both, and of selling by retail,

any country liquor or intoxicating drug within any specified local area.

(2) The Collector shall grant to a lessee under sub-section (1) a license in the terms of his lease; and, when there is no condition in the lease which prohibits sub letting, may, on the application of the lessee, grant a license to any sub-lessee approved by the Collector.

Manufacture and sale of liquor in military cantonments.

28. Within the limits of any military cantonment, and within such distance from those limits as the Local Government in any case may prescribe, no license for the manufacture or sale of liquor and no lease of the retail vend of liquor such as is described in section 27 shall be granted unless with the consent of the Commanding Officer.

Prohibition of sale to persons under the age of eighteen years.

29. No licensed vender and no person in the employ of such vendor or acting on his behalf shall sell or deliver any liquor or intoxicating drug to any person apparently under the age of eighteen years whether for consumption by such person or by another person and whether for consumption on or off the premises of such vendor.

Prohibition of employment of children under the age of sixteen years and of women.

30. (1) No person who is licensed to sell foreign liquor or country spirit for consumption on his premises shall, during the hours in which such premises are kept open for business, employ or permit to be employed, either with or without remuneration, any child under the age of sixteen years in any part of such premises in which such liquor or spirit is consumed by the public.

(2) No person who is licensed to sell foreign liquor or country spirit for consumption on his premises shall, without the previous permission in writing of the Collector, during the hours in which such premises are kept open for business, employ or permit to be employed, either with or without remuneration, any woman in any part of such premises in which liquor is consumed by the public.

(3) Every permission granted under sub-section (2) shall be endorsed on the license, and may be modified and withdrawn.

CHAPTER V.

DUTIES AND FEES.

Duty on excisable articles

31. A duty, at such rate or rates as the Local Government shall direct, may be imposed, either generally or for any specified local area, on any excisable article—

(*a*) imported, exported or transported in accordance with the provisions of section 16; or

(*b*) manufactured or cultivated under any license granted under section 20, or

(*c*) manufactured in any distillery established, or any distillery or brewery licensed under section 21:

Provided as follows —

(*i*) duty shall not be so imposed on any article which has been imported into British India and was liable on importation to duty under the Indian Tariff Act, 1894, or the Sea Customs Act, 1878,

(*ii*) the duty on denatured spirit or beer manufactured in India, shall, unless the Local Government, with the previous sanction of the Governor-General in Council, otherwise directs, be equal to the duty to which denatured spirit or beer respectively imported into British India by sea is liable under the Indian Tariff Act, 1894, or any other law for the time being in force relating to the duties or customs on goods imported into British India.

Explanation.—Duty may be imposed under this section at different rates according to the places to which any excisable article is to be removed for consumption, or according to the varying strengths and quality of such article.

Manner in which duty may be levied.

32. Subject to such rules regulating the time, place and manner as the Financial Commissioner may prescribe, such duty shall be levied rateably on the quantity of excisable article imported, exported, transported, collected or manufactured in, or issued from, a distillery, brewery or warehouse:

Provided that the duty may be levied—

(*a*) on intoxicating drugs by an acreage rate levied on the cultivation of the hemp or coca plant, or by a rate charged on the quantity collected,

(*b*) on spirit or beer manufactured in any distillery established, or any distillery or brewery licensed under this Act in accordance with such scale of equivalents calculated on the quantity of materials used, or by the degree of attenuation of the wash or wort, as the case may be, as the Local Government may prescribe;

(*c*) on tari, by a tax on each tree from which the tari is drawn:

Provided further that, where payment is made upon issue of an excisable article for sale from a warehouse established or licensed under section 22 (*a*), it shall be made—

(*a*) if the Local Government by notification so directs, at the rate of duty which was in force at the date of import of that article, or

(*b*) in the absence of such direction by the Local Government, at the rate of duty which is in force on that article on the date when it is issued from the warehouse.

Payment for grant of leases.

33. Instead of or in addition to any duty leviable under this chapter the Local Government may accept payment of a sum in consideration of the lease of any right under section 27.

CHAPTER VI.

LICENSES, PERMITS AND PASSES

Fees for terms, conditions and form of and duration of, licenses, permits and passes.

34. (1) Every license, permit or pass granted under this Act shall be granted—

(*a*) on payment of such fees, if any,

(*b*) subject to such restrictions and on such conditions,

(*c*) in such form and containing such particulars,

(*d*) for such period,

as the Financial Commissioner may direct.

Security

(2) Any authority granting a license under this Act may require the licensee to give such security for the observance of the terms of his license, or to make such deposit in lieu of security, as such authority may think fit.

Grant of licenses for sale

35. (1) Subject to the rules made by the Financial Commissioner under the powers conferred by this Act the Collector may grant licenses for the sale of any excisable article within his district

Ascertainment of public opinion

(2) Before any license is granted in any year for the retail sale of liquor for consumption on any premises which have not been so licensed in the preceding year the Collector shall take such measures, in accordance with rules to be made by the Local Government in this behalf, as may best enable him to ascertain local public opinion in regard to the licensing of such premises.

(3) A license for sale in more than one district of the Punjab shall be granted by the Financial Commissioner only

Power to cancel or suspend licenses, &c.

36 Subject to such restrictions as the Local Government may prescribe, the authority granting any license, permit or pass under this Act may cancel or suspend it—

(*a*) if it is transferred or sub-let by the holder thereof without the permission of the said authority , or

(*b*) if any duty or fee payable by the holder thereof be not duly paid ; or

(*c*) in the event of any breach by the holder of such license, permit or pass or by his servants, or by any one acting on his behalf

with his express or implied permission, of any of the terms or conditions of such license, permit or pass ; or

(*d*) if the holder thereof is convicted of any offence punishable under this Act or any other law for the time being in force relating to revenue, or of any cognizable and non-bailable offence, or of any offence punishable under the Merchandise Marks Act, 1889, or of any offence punishable under sections 482 to 489 (both inclusive) of the Indian Penal Code ; or

(*e*) if the holder thereof is punished for any offence referred to in clause (8) of section 167 of the Sea Customs Act, 1878 ; or

(*f*) where a license, permit or pass has been granted on the application of the grantee of a lease under this Act, on the requisition in writing of such grantee , or

(*g*) at will, if the conditions of the license or permit provide for such cancellation or suspension

Power to cancel any other license

37. When a license, permit or pass held by any person is cancelled under clause (*a*), (*b*), (*c*), (*d*) or (*e*) of section 36 the authority aforesaid may cancel any other license, permit or pass granted to such person within the same district under this Act or under any other law for the time being in force relating to excise revenue or under the Opium Act, 1878, and the Financial Commissioner may cancel any such license, permit or pass granted to such person in any district to which this Act applies.

Power to recover fee

38. In the case of cancellation or suspension of a license under clause (*a*), (*b*), (*c*), (*d*) or (*e*) of section 36, the fee payable for the balance of the period for which any license would have been current but for such cancellation or suspension, may be recovered from the ex-licensee as excise revenue.

Power of Collector to take grants under management or to resell

39. If any holder of a license granted under this Act, or any person to whom a lease has been granted under section 27, makes default in complying with any condition imposed upon him by such license or lease, the Collector may take the grant under management

at the risk of the person who has so defaulted or may resell it and recover in the manner laid down in section 60 of this Act any deficiency in price and all expenses of such re-sale.

No compensation or refund claimable for cancellation or suspension of license, &c., under this section.

40. When a license, permit or pass is cancelled or suspended under clause (*a*), (*b*), (*c*), (*d*) or (*e*) of section 36 or under section 37, the holder shall not be entitled to any compensation for its cancellation or suspension nor to the refund of any fee paid or deposit made in respect thereof.

Power to withdraw licenses.

41. (1) Whenever the authority which granted a license, permit or pass under this Act considers that such license, permit or pass should be withdrawn for any cause other than those specified in section 36, it may, on remitting a sum equal to the amount of the fees payable in respect thereof for fifteen days, withdraw the license either—

(*a*) on the expiration of fifteen days' notice in writing of its intention to do so, or

(*b*) forthwith without notice.

Compensation in the case of withdrawal.

(2) If any license, permit, or pass be withdrawn under clause (*b*) of sub-section (1), in addition to the sum remitted as aforesaid, there shall be paid to the licensee such further sum (if any) by way of compensation as the Financial Commissioner may direct.

Refund of fee or deposit.

(3) When a license, permit or pass is withdrawn under this section, any fee paid in advance or deposit made by the licensee in respect thereof shall be refunded to him, after deducting the amount (if any) due to Government.

Technical irregularities in license, &c.

42. (1) No license, permit or pass granted under this Act shall be deemed to be invalid by reason merely of any technical defect, irregularity or omission in the license or in any proceedings taken prior to the grant thereof.

(2) The decision of the Financial Commissioner as to what is a technical defect, irregularity or omission shall be final.

No claim in consequence of refusal to renew a license &c

43. No person to whom a license, permit or pass may have been granted shall be entitled to claim any renewal thereof, and no claim shall lie for damages or otherwise in consequence of any refusal to renew a license, permit or pass on the expiry of the period for which it remains in force

Surrender of license

44 (1) No holder of a license granted under this Act to sell an excisable article shall surrender his license except on the expiration of one month's notice in writing given by him to the Collector of his intention to surrender the same and on payment of the fee payable for the license for the whole period for which it would have been current but for the surrender

Provided that, if the Collector is satisfied that there is sufficient reason for surrendering the license, he may remit to the holder thereof the sum so payable on surrender or any portion thereof.

(2) Sub section (1) shall not apply in the case of any license granted under section 27 (2)

Explanation.—The words "holder of a license" as used in this section include a person whose tender or bid for a license has been accepted, although he may not actually have received the license

CHAPTER VII

POWERS AND DUTIES OF OFFICERS, ETC.

Power to enter and inspect places of manufacture and sale

45 Any Excise officer not below such rank as the Local Government may prescribe may—

(*a*) enter and inspect, at any time by day or by night, any place in which any licensed manufacturer carries on the manufacture of or stores any excisable article ,

(*b*) enter and inspect at any time within the hours during which sale is permitted, and at any other time during which the same may be open, any place in which any excisable article is kept for sale by any person holding a license under this Act ,

(*c*) examine accounts and registers, test, measure or weigh any materials, stills, utensils, implements, apparatus or excisable article found in that place ,

(*d*) seize any accounts, registers, measures, weights or testing instruments which he has reason to believe to be false.

Powers of excise officers to investigate offences punishable under this Act

46. (1) The Local Government may by notification invest any excise officer, not below the rank of sub-inspector, with power to investigate any offence punishable under this Act committed within the limits of the area in which the officer exercises jurisdiction

(2) Every officer so empowered may within those limits exercise the same powers in respect of such investigation as an officer in charge of a police station may exercise in a cognizable case under the provisions of chapter XIV of the Code of Criminal Procedure, 1898

Powers of arrest seizure and detention

47 Any officer of the excise, police, salt, or land revenue department, not below such rank and subject to such restrictions as the Local Government may prescribe, and any other person duly empowered by notification by the Local Government in this behalf may arrest without warrant any person found committing an offence punishable under section 61, or section 63, and may seize and detain any excisable or other article which he has reason to believe to be liable to confiscation under this Act or other law for the time being in force relating to excise revenue: and may detain and search any person upon whom, and any vessel, raft, vehicle, animal, package, receptacle or covering in or upon which he may have reasonable cause to suspect any such article to be

Power of magistrate to issue warrant for search or arrest.

48 A magistrate having reason to believe that an offence under section 61 or 63 has been, is being, or is likely to be committed, may—

(*a*) issue a warrant for the search of any place in which he has reason to believe that any excisable article, still, utensil, implement, apparatus or materials, in respect of which such offence has

been, is being, or is likely to be committed, are kept or concealed; and

(*b*) issue a warrant for the arrest of any person whom he has reason to believe to have been, to be, or to be likely to be engaged in the commission of any such offence.

Power of excise officer to search without warrant

49. (1) Whenever any excise officer not below such rank as the Local Government may by notification prescribe, has reason to believe that an offence punishable under section 61, section 62, section 63, or section 64, has been, is being, or is likely to be committed in any place, and that a search-warrant cannot be obtained without affording the offender an opportunity of escape or of concealing evidence of the offence, he may, at any time, by day or night, enter and search such place

Further powers of seizure, detention, search and arrest

(2) Every excise officer as aforesaid may seize anything found in such place which he has reason to believe to be liable to confiscation under this Act, and may detain and search and, if he thinks proper, arrest any person found in such place whom he has reason to believe to be guilty of such offence as aforesaid

Procedure relating to arrests searches, &c

50. Save as in this Act otherwise expressly provided, the provisions of the Code of Criminal Procedure, 1898, relating to arrests, detentions in custody, searches, summonses, warrants of arrest, search-warrants, production of persons arrested and investigation of offences shall be held to be applicable to all action taken in these respects under this Act:

Provided that—

(1) any offence under this Act may be investigated by an officer empowered under section 46 without the order of a magistrate;

(2) whenever an excise officer below the rank of Collector makes any arrest, seizure or search he shall within twenty-four hours thereafter make a full report of all the particulars of the arrest,

seizure or search to his immediate official superior, and shall, unless bail be accepted under section 73, take or send the person arrested, or the article seized, with all convenient despatch to a magistrate for trial or adjudication

Police to aid excise officers.

51 All police officers are required to aid the excise officers in the due execution of this Act, upon request made by such excise officers

Duty of landholders and others to give information.

52 (*a*) Every owner or occupier of land and the agent of any owner or occupier of land on which—

(*b*) Every lambardar, village headman, village accountant, village watchman, village policeman and every officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards in whose village—

there shall be any manufacture or illegal import or collection of any excisable article not licensed under this Act, or any unlawful cultivation of any plants from which an intoxicating drug can be produced, shall be bound, in the absence of reasonable excuse, to give notice of the same to a magistrate or to an officer of the excise police or land revenue department as soon as the fact comes to his knowledge

Duty of officer in charge of police station to take charge of articles seized.

53 Every officer in charge of a police station shall take charge of and keep in safe custody, pending the orders of a magistrate or of the Collector or of an officer empowered under section 46 (1) to investigate the case, all articles seized under this Act which may be delivered to him, and shall allow any excise officer who may accompany such articles to the police station, or may be deputed for the purpose by his superior officer to affix his seal to the articles and to take samples of and from them All samples so taken shall also be sealed with the seal of the officer in charge of the police station.

Power to close shops for the sake of public peace.

54 (1) The District Magistrate or a Sub-Divisional Magistrate by notice in writing to the licensee may require that any shop in which any excisable article is sold shall be closed at such times or

for such period as he may think necessary for the preservation of the public peace

(2) If a riot or unlawful assembly is apprehended or occurs in the vicinity of any such shop, a magistrate of any class may require such shop to be kept closed for such period as he may think necessary :

Provided that where any such riot or unlawful assembly occurs the licensee shall, in the absence of a magistrate, close his shop without any order

(3) When any Sub Divisional Magistrate makes a direction under sub section (1) or any magistrate makes a direction under sub-section (2), he shall forthwith inform the Collector of his action and his reasons therefor

CHAPTER VIII

GENERAL PROVISIONS

Measures, weights and testing instruments.

55 Every person who manufactures or sells any excisable article under a license granted under this Act shall be bound—

(*a*) to supply himself with such measures weights and instruments as the Financial Commissioner may prescribe, and to keep the same in good condition , and

(*b*) on the requisition of any excise officer duly empowered by the Collector in that behalf, at any time to measure, weigh or test any excisable article in his possession in such manner as the said excise officer may require

Power of Local Government to exempt excisable articles from the provisions of the Act

56 The Local Government may by notification, either wholly or partially and subject to such conditions as it may think fit to prescribe, exempt any excisable article from all or any of the provisions of this Act.

Bar of certain suits.

57. No suit shall lie in any civil court against the Secretary of State for India in Council or any officer or person for damages for any act in good faith

done, or ordered to be done, in pursuance of this Act or of any other law for the time being in force relating to the excise revenue

Power of Local Government to make rules

58 (1) The Local Government may, by notification, make rules for the purpose of carrying out the provisions of this Act or any other law for the time being in force relating to excise revenue.

(2) In particular, and without prejudice to the generality of the foregoing provisions, the Local Government may make rules—

(*a*) prescribing the duties of excise officers ,

(*b*) regulating the delegation of any powers by the Financial Commissioner, Commissioner or Collector, under section 13, clause (*b*) ,

(*c*) prescribing the time and manner of presenting, and the procedure for dealing with appeals from orders of excise officers ,

(*d*) regulating the import, export, transport or possession of any excisable article ,

(*e*) regulating the periods and localities for which, and the persons, or classes of persons, to whom licenses, permits and passes for the vend by wholesale or by retail of any excisable article may be granted and regulating the number of such licenses which may be granted in any local area ,

(*f*) prescribing the procedure to be followed and the matters to be ascertained before any license is granted for the retail vend of liquor for consumption on the premises ,

(*g*) for the prohibition of the sale of any excisable article to any person or class of persons ,

(*h*) regulating the power of excise officers to summon witnesses from a distance ,

(*i*) regulating the grant of expenses to witnesses and compensation to persons charged with offences under this Act and subsequently released, discharged or acquitted ,

(*j*) for the prohibition of the employment by a licensee-holder of any person or class of persons to assist in his business in any capacity whatsoever;

(*k*) for the prevention of drunkenness, gambling and disorderly conduct in or near any licensed premises, and the meeting or remaining of persons of bad character in such premises.

(3) The power conferred by this section of making rules is subject to the condition that the rules be made after previous publication:

Previous publication of rules.

Provided that any such rules may be made without previous publication if the Local Government consider that they should be brought into force at once.

Powers of Financial Commissioner to make rules.

39. The Financial Commissioner may, by notification, make rules—

(*a*) regulating the manufacture, supply, storage or sale of any excisable article, including—

(*i*) the character, erection, alteration, repair, inspection, supervision, management and control of any place for the manufacture, supply, storage or sale of such article and the fittings, implements, apparatus and registers to be maintained therein;

(*ii*) the cultivation of the hemp or coca plant and the collection of spontaneous growth of such plant and the preparation of any intoxicating drug;

(*iii*) the tapping or drawing of tari from any tari-producing tree:

(*b*) regulating the bottling of liquor for purposes of sale:

(*c*) regulating the deposit of any excisable article in a warehouse and the removal of any excisable article from any warehouse or from any distillery or brewery:

(*d*) prescribing the scale of fees or the manner of fixing the fees payable in respect of any license, permit or pass, or in respect of the storing of any excisable article:

(*e*) regulating the time, place and manner of payment of any duty or fee:

(*f*) prescribing the authority by, the restrictions under and the condition on which any license, permit or pass may be granted, including provision for the following matters :—

(*i*) the prohibition of the admixture with any excisable article of any substance deemed to be noxious or objectionable;

(*ii*) the regulation or prohibition of the reduction of liquor by a licensed manufacturer or licensed vendor from a higber to a lower strength,

(*iii*) the fixing of the strength, or price below which any excisable article shall not be sold, supplied or possessed;

(*iv*) the prohibition of sale of any excisable article except for cash;

(*v*) the fixing of the days and hours during which any licensed premises may or may not be kept open, and the closure of such premises on special occasions,

(*vi*) the specification of the nature of the premises in which any excisable article may be sold, and the notices to be exposed at such premises;

(*vii*) the form of the accounts to be maintained and the returns to be submitted by licenseholders, and

(*viii*) the prohibition or regulation of the transfer of licenses;

(*g*) (*i*) declaring the process by which spirit shall be denatured;

(*ii*) for causing spirit to be denatured through the agency or under the supervision of its own officers;

(*iii*) for ascertaining whether such spirit has been denatured;

(*h*) providing for the destruction or other disposal of any excisable article deemed to be unfit for use;

(*i*) regulating the disposal of confiscated articles;

(*j*) prescribing the amount of security to be deposited by holders of leases, licenses, permits or passes for the performance of the conditions of the same.

Recovery of dues.

60. (1) The following monies, namely,—

(*a*) all excise revenue,

(*b*) any loss that may accrue, when in consequence of default a grant has been taken under management by the Collector or has been resold by him under section 39, and

(*c*) All amounts due to Government by any person on account of any contract relating to the excise revenue,

may be recovered from the person primarily liable to pay the same, or from his surety (if any), by distress and sale of his moveable property, or by any other process for the recovery of arrears of land revenue due from land holders or from farmers of land or their sureties

(2) When a grant has been taken under management by the Collector or has been resold by him under section 39, the Collector may recover, in any manner authorized by sub section (1) any money due to the defaulter by any lessee or assignee

(3) In the event of default by any person licensed or holding a lease under this Act all his distillery, brewery, warehouse or shop, premises, fittings or apparatus and all stocks of excisable articles or materials for manufacture of the same held in or upon any distillery, brewery, warehouse or shop premises shall be liable to be attached in satisfaction of any claim for excise revenue or in respect of losses incurred by Government through such default and to be sold to satisfy such claim, which shall be a first charge upon the sale-proceeds

CHAPTER IX

OFFENCES AND PENALTIES.

Penalty of unlawful import export transport manufacture, possession &c.

61. (1) Whoever, in contravention of any section of this Act or of any rule, notification issued or given thereunder or order made, or of any license, permit or pass granted under this Act,—

(*a*) imports, exports, transports, manufactures, collects or possesses any excisable article ; or

(*b*) constructs or works any distillery or brewery ; or

(*c*) uses, keeps or has in his possession any materials, still, utensil, implements or apparatus whatsoever for the purpose of manufacturing any excisable article other than tari ;

shall be punishable for every such offence with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees, or with both :

Provided that when any person is convicted under this section of an offence committed in respect to cocaine or any of the synthetics thereof, he shall be punishable with imprisonment which may extend to one year or with fine which may extend to two thousand rupees, or with both ;

Penalty for unlawful import export, transport manufacture possession sale &c

(2) Whosoever, in contravention of any section other than sections 29, and 30 of this Act or of any rule, notification issued or given thereunder or order made, or of any license, permit or pass granted under this Act—

(*a*) sells any excisable article , or

(*b*) cultivates the hemp or coca plant , or

(*c*) removes any excisable article from any distillery, brewery or warehouse established or licensed under this Act , or

(*d*) bottles any liquor for the purposes of sale , or

(*e*) taps or draws tari from any tari-producing tree ,

shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both

Provided that when any person is convicted under this section of an offence committed in respect to cocaine or any of the synthetics thereof, he shall be punishable with imprisonment which may extend to one year or with fine which may extend to two thousand rupees, or with both.

Lahan—Possession of vessels smelling—S 61 —

Under the Excise Act, Lahan is not a fermented liquor Where therefore a person is found in possession of vessels smelling Lahan, the only reasonable inference is that the Accused had made preparations for manufacturing liquor, and this is not enough to constitute an attempt to commit an offence

Chanda Singh—29 P R 1884

S 61 —

Just before the expiry of his contract a licensed vendor sold away his remaining stock of bhang to the newly appointed contractor, Held, that the licensed vendor was not guilty of any offence under the Excise Laws

Mahomad—26 P R 1883

Liability of carrier carrying liquor on behalf of licensed Contractor—
S 61 (1) (a) —

One Jai Gopal, a licensed vendor of liquor at T had gone to attend a marriage of some relation of his at a village He was approached by the guests, and was asked to supply liquor for the marriage festivities He sent a Ruqa by the hand of the Accused and directed M who was in charge of the liquor shop at T to make over 8 bottles of country liquor to the Accused Accused received the 8 bottles in due course and during the journey the Railway Police stopped him He was convicted under S 61 (a) of Act I of 1914, and sentenced to pay a fine of 100 Rs or in default to suffer 2 months R I

It was contended in revision that the Accused was not in possession of liquor on his own account, but was acting merely as a carrier on behalf of Jai Gopal, the liquor contractor and was therefore not liable to be punished

Held that altho Jai Gopal was a liquor contractor, he was not entitled to possess 8 bottles of liquor for sale or to present them to the marriage party, without complying with the provisions of Notification No 840 dated 12th June 1915 of the Punjab Government, under which it is incumbent upon a person desiring to treat guests at a marriage festival or gathering or similar occasion, to obtain a pass from the District Excise officer or an Excise officer of the first class if the amount of liquor required be up to ten gallons Jai Gopal had not obtained such a pass and therefore it cannot be said that the possession of 8 bottles by him would have been legal In these circumstances the Accused could not legally be in possession on his behalf He has been rightly convicted

(P) Gokul Chand Vs Emp —39 I C 489

Possession of country liquor outside licensed premises—Right of License Holder—
Ss 24 (3) 61 and Excise Manual Vol I S 407 —

One Puran Singh a licensed retail vendor of country liquor was on 19—7—21 found in possession of a wooden case containing 8 bottles of

country liquor at Dhudial Railway Station His home was at Dhudial but his licensed liquor shop was at Said Kasran He was convicted of an offence under S 61 and sentenced to pay a fine of Rs 500, or in default to 6 months imprisonment

On appeal, the Sessions Judge accepted the appeal on the ground that as Puran Singh was a licensed vendor of country liquor, he was entitled to be in possession of such liquor at any place without any limit as to quantity This conclusion he arrived at on the provisions of S 407 of Vol I of the Excise Manual

The Government appealed against the acquittal by the Sessions Judge on the ground that the view taken by the Sessions Judge was erroneous

Held—In our opinion the appeal must succeed S 407 of Vol I of the Excise manual cannot override the provisions of the Excise Act and the learned Sessions Judge has entirely overlooked the provisions of S 24 (3) which are as follows — A licensed vendor shall not have in his possession at any place, *other than that authorised by his license*, any quantity of any exciseable article in excess of such quantity as the Local Government has under S 5 declared to be the limit of sale by retail except under a permit granted by the Collector in that behalf In the case of country liquor this quantity has been fixed by the Local Government at one seer by Punjab Government Notification No 141 A dated 1—2—1914 Admittedly, if Puran Singh can be held to have been in possession of the case of 8 bottles he has exceeded this limit, and has committed the offence of which he was convicted We would note that Gokalchand vs Emp (39 I C 489—16 P R 1917 Cr) was applicable to this case and the learned Sessions Judge should have followed it

S 407 aforesaid would empower a license holder to possess country liquor to any extent on the licensed premises but does not entitle him to possess more than the prescribed amount elsewhere We accept the appeal and setting aside the order of the learned Sessions Judge return the appeal to him for a decision on the merits

Emp Vs Puran Singh—(L) 4 L 10=73 I C 699

Joint possession and sale of liquor by father and son—Liability—
S 61 (1) (a) (2) (a)

Khushal Singh, a licensee for liquor brought a certain quantity of liquor to the house of his father Kishen Singh. On a purchaser asking for liquor, Kishen Singh called his son Khushal Singh to bring the liquor The price for the liquor was handed over to the father Kishen Singh both of them were convicted for joint possession and sale On revision [illegible] do not think [illegible] Khushal Singh has been [illegible] Kishen Singh was a licensee for sale of liquor

Gakhar and he it was, according to Attar Singh witness who brought the 8 bottles of liquor to Gujranwala The possession therefore was his exclusively, and the mere fact that he brought the liquor to Kishen Singh's house does not make the possession joint of himself and Kishen Singh Further, I do not think it can be held that the latter joined in the sale merely because he called to his son to bring 2 bottles and because the money was handed to him I therefore accept the petition so far as Kishen Singh is concerned and setting aside his conviction and sentence acquit him

(L) Kishen Singh and another Vs Emp —24 Cr L J 331—72 I C 331

Possession of cocaine by lessee of a house Presence of visitors—Liability—S 61 (1) (a) —

The Petitioner and 3 other persons were found sitting round a fair quantity of cocaine in a house The cocaine as well as a pair of scissors and paper was lying on the ground before them The 3 other persons were not the inmates but had come from Bareilly Held that under these circumstances it could not be said that any one of these three persons was in possession of the house or of the cocaine and that the accused alone was in possession of it 'The house had been leased to the petitioner and there can be no doubt that he was in possession of the house and was living in it Presumably therefore the cocaine was in his possession and he was making packets of it to be sold or delivered to the visitors Mia Vs Emp (77 I C 44) is not in point because in that case the house in which a charas was found was in the joint possession of two men and therefore it could not be said which of them was in possession of the charas Petition dismissed

Nanuan Vs Emp —86 I C 217—26 Cr L J 729

Illicit liquor found in a cattle shed—Liability of Father and Son—Presumption reason—S 61 —

An earthen vessel containing a large quantity of Lahan was found burried under ground in a cattle shed belonging to the Petitioner Gehna Held that there can be no doubt that Gehna should be deemed to be in possession of the Lahan and that his conviction must be maintained As regards his son Tara, considering that the cattle shed is situated at a distance of about a mile from the residential house and that there is no evidence on the record that Gehna's son Tara was in joint possession of the shed held that he should not be presumed to be in joint possession simply because he is a son of the owner of the shed As pointed out in Q E Vs Sangam Lal 19A 129 when it is sought to establish that possession and control are with some member of the family other than the managing member there must be good and clear evidence of the fact before the Court can arrive at such a conclusion In view of the circumstances of this case including the fact that Tara was

neither living in the Kotha in question, nor was he in actual possession there of, his conviction cannot be sustained

(L.) Tara and another Vs Emp —61 I C 720

Illicit liquor found in a house occupied by 2 brothers—Presumption re younger brother—S 61 (1) (a) —

The petitioners who were own brothers were convicted by the First Class Magistrate Sheikhupura for being in possession of illicitly manufactured liquor and sentenced to 1 year s R I each All the facts proved against the younger brother were that 2 bottles of illicit liquor were found in a house occupied by himself and his elder brother and that he pointed out some broken pieces of a pitcher in the field of another person Held that the latter point is of no importance and as to the former, the presumption was presumably that of his brother against whom there was other evidence that he had been concerned in the manufacture Mehr Singh acquitted

Mehr Singh and another Vs Emp —(L) 60 I C 672

Finding of illicit liquor—Wife breaking a bottle of liquor—Presumption—S 61 —

One Bishna and his wife Thakari were convicted under S 61 of being in possession without a license of liquor and apparatus for manufacturing it B s application for revision was rejected Thakari was convicted only because it was found that during the raid on the premises she broke a bottle of liquor Held that her doing this would show nothing more than that she wanted to destroy evidence and does not prove that the liquor and other articles were in her possession Those articles must be regarded as having been in the possession only of her husband who was the owner of the house Thakari acquitted The Court refused to alter the conviction to one under S 201 I P C as she was not charged with that offence

Bishna and another Emp (L) 59 I C 693=9 P W R 1921 Cr

Illegality of search as defence—S. 61 —

The Accused was prosecuted under S 61 of the Excise Act, but the Magistrate discharged him on the ground that the offence had been discovered by an illegal search.

Held by the Chief Court, ordering a fresh trial, that illegality in a search would not relieve any person from liability to prosecution under the Act.

Russell Vs Hira Gir—37 P.R. 1880

Abetment—Abettor guilty the principal has not committed any offence—S 61 —

The Accused purchased a bottle of liquor from a licensed vendor for the use of a soldier and handed it over to the latter This was in contravention of the vendor's license The vendor however sold it in good faith and was not aware that the liquor was for the use of the soldier The court acquitted the Accused holding that as the vendor himself had not committed any offence, it could not be said that the Accused abetted the commission of an offence. Held on appeal that the Accused must be found guilty of abetment of the breach of the vendor's license under S 108 I P C read with Exp in and illustration (d), though the vendor himself might have committed no offence.

55 P R 1905 (Cr.)

Medical practitioner mixing water with brandy and selling to his patient—whether offence —

It is monstrous to hold that a medical practitioner who put a little brandy into one of the medicines prescribed and sold by him to a patient, contravened the provisions of the Excise Law and sold brandy There is no such sale as contemplated in the Excise Act

Emp. Vs Bhagawan Das—(P) 16 Cr L J 218=27 I C. 842

Anæsthesine whether preparation of cocaine or akin to cocaine—Selling of—S. 61 —

The Accused kept a chemist's shop. He was convicted under S 61 of selling a drug known as Anæsthesine, the Magistrate holding that Anæsthesine possesses at least one physiological effect in common with cocaine *i e*, local Anæsthesia, and therefore it satisfied the condition laid down in Notification No 1205 dated 10—9—1915 By this notification all drugs are declared to be intoxicating drugs within S 3 (13) (e), which have a like physiological effect to that of cocaine

Held on revision that Anæsthesine is not a preparation of cocaine nor is in any way akin to cocaine Anæsthesine is a coal tar product and is the Ethylester of Para amiora-Benzoic Acid known as Benzocain.

Held further that a prohibited drug must have all the physiological effects produced by cocaine. Like cocaine, Anæsthesine is an anodyne and brings

about local paralysis of the sensory nerves That it has the same intoxicating properties as cocaine appears to be more than doubtful In fact, it may be said without any exaggeration that the toxic effects produced by Anæsthesine and cocaine are very widely different Ten grains of cocaine have caused death, whereas more than 1 200 grains of Anæsthesine must be administered if the dose is to be lethal Anæsthesine does not constrict the blood vessels, does not cause a rise of temperature and has no mediatic effects, but all these occur after the administration of cocaine

In fact the only physiological effect common to both drugs appears to be the local insensibility they cause, but many other substances *viz* Carbolic Acid, Ethylchloride, veratrine, ice, etc, produce the same effect Therefore Anæsthesine does not produce a general physiological effect like that caused by cocaine, and therefore the petitioner is acquitted

Bishan Das Vs Emp —(Panj) 42 I C 166

Manufacture of liquor—S 61 First offender—Release of—562 Cr P C —

The Accused were placed before the 1st class Magistrate Sialkot under S 61 of the Excise Act 1914 with manufacturing liquor contrary to law and being in possession of it The Magistrate convicted them and sentenced them to 4 M R I each and a fine of Rs 50 each On appeal the Sessions Judge reduced the sentences to 21 days imprisonment and Rs 20 fine on the ground that this was the appellants' first offence, that the principle of S 562 Cr P C applied and that the appellants are father and 2 sons

The Government appealed with a view to enhancing the sentence

Held that the offence of manufacturing illicit liquor implies a good deal of preparation in most cases it is done with the intention of selling it to others, it can never be said to be done in consequence of temptation, it is an offence which escapes detection 9 times out of ten it deprives Government of Revenue besides demoralizing the people and that deterrent sentences are absolutely necessary Further the Legislature in passing the new Excise Act intended that the old Law was not deterrent and raised the maximum term of imprisonment from 3 Months to one year and therefore substantial terms of imprisonment should be awarded

Conviction for manufacture of liquor—Necessity of direct evidence—S. 61 (1)—

The Accused Budha was found in possession of 14 seers and 8 Chitaks of Lahan or illicit liquor when his house in Dipake village in Sialkot District was searched by the Police and the Revenue Assistant. He was convicted under S. 61 and sentenced to pay a small fine of Rs. 50.

On reference by the Sessions Judge held following Emp. Vs. Sajan Singh 30 I.C. 450 that in convictions for manufacturing liquor contrary to law and being in possession of it, deterrent sentences are absolutely necessary and that this was also the intention of the Legislature when passing the new Excise Act. Fine enhanced to 200 Rs. or 6 M.R.I.

Emp. Vs. Budha—60 I.C. 656.

Sentence of prison—Excise cases—Deterrent—Imprisonment—S. 61 (1) (c)—

It is of very great importance in awarding punishment in Excise cases to consider that illicit distillation results not only in loss of Excise revenue but also in drunkenness and crime. In view however of the deterrent nature of a sojourn in jail on the character of a person who in other respects is law abiding, a really heavy sentence of one will be preferable to a sentence of imprisonment in most cases of a first conviction for infraction of an Excise Law.

Lachhmi Singh Vs. Emp.—(P) 17 Cr. L. J. 262=34 I.C. 1002.

Solitary confinement—When it could be ordered in Excise cases—

When a person is convicted under Excise Act a Court can only pass a sentence of imprisonment and not solitary confinement as the offence is not one under the I.P.C.

Gurdit—17 P.R. 1899.

Confession to a Superintendent of Excise—When it is relevant—S. 61—

When a person is tried for illicit possession of opium a confession made by him to a Superintendent of Excise is admissible in evidence, provided no inducement, threat or promise had been held out or made to the Accused in order to procure the confession.

Rosan Ali Vs. Emp.—45 I.C. 294.

Penalty for knowingly selling to persons under eighteen, or employing children or women.

62. If any licensed vendor, or any person in his employ or acting on his behalf,—

(*a*) in contravention of section 29 sells or delivers any liquor or intoxicating drug to any person apparently under the age of eighteen years, or

(*b*) in contravention of section 29, employs or permits to be employed on any part of his licensed premises referred to in that section any child under the age of sixteen years or woman, or

(*c*) sells any excisable article to a person who is drunk or intoxicated, or

(*d*) permits drunkenness, intoxication, disorderly conduct or gaming on the licensed premises of such licensed vendor, or

(*e*) permits any person whom he knows or has reason to believe to have been convicted of any non bailable offence or any reputed prostitute to frequent his licensed premises, whether for the purposes of crime or prostitution or not,

he shall in addition to any other penalty to which he may be liable be punishable with a fine which may extend to five hundred rupees.

When any licensed vendor or any person in his employ or acting on his behalf is charged with permitting drunkenness or intoxication on the licensed premises of such vendor, and it is proved that any person was drunk or intoxicated on such premises, it shall lie on the person charged to prove that the licensed vendor or the person employed by him or acting on his behalf took all reasonable steps for preventing drunkenness or intoxication on such premises

Penalty for attempting to render denatured spirit fit for human consumption

63. Whoever attempts to render fit for human consumption any spirit, whether manufactured in British India or not, which has been denatured, or has in his possession any spirit in respect of which he knows or has reason to believe that any such attempt has been made, shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both

Penalty for fraud by licensed manufacturer or vendor or his servant

64 If any licensed manufacturer or licensed vendor, or any person in his employ or acting on his behalf,—

causing it to be believed that such bottle, case, package, or other receptacle contains foreign liquor,

he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both

Penalty for certain acts by licensee or his servant

65 Whoever, being the holder of a license, permit or pass granted under this Act, or being in the employ of such holder or acting on his behalf,—

(*a*) fails wilfully to produce such license, permit or pass on the demand of any excise officer or of any other officer duly empowered to make such demand, or

(*b*) in any case not provided for in section 61 wilfully contravenes any rule made under section 58 or section 59, or

(*c*) wilfully does or omits to do anything in breach of any of the conditions of the license, permit or pass not otherwise provided for in this Act,

shall be punishable in case (*a*) with fine which may extend to two hundred rupees, and in case (*b*) or case (*c*) with fine which may extend to five hundred rupees

Licensee contravening rules as to keeping registers—Ss 58 59 65 78 —

Sunder Das and Ganpat Rai joint licensees of a liquor shop at Tanda in the Guzrat District and Howeli Ram, son of Sunder Das, who worked in the shop at Tanda were prosecuted under Ss 65 and 77 of the Excise Act read with Rule No 314 framed under Ss 58 and 59 of the Act Sunder Das had a pass for the importation of 2 dozen bottles and 4 dozen half bottles of liquor for the shop at Tanda, but on arrival of the consignment at Guzrat, 4 of the large bottles were found to be missing When the consignment reached Tanda, Howeli Ram entered in the register prescribed for the purpose, the receipt of 2 dozen large bottles and 4 dozen small bottles He did not show that any of the bottles covered by the pass were missing Howeli Ram's explanation was that he intended in the evening to make an entry in the remarks column showing that so many bottles were missing and so many were broken out of the consignment covered by the pass The Magistrate convicted all the three accused and fined them 25 Rs each

The theory of the prosecution was that Sunder Das used to keep some of the bottles of liquor received in a consignment and take them to Lakhanwal

and sell them there illegally, that this was known to Howeli Ram who entered in the register the total number of bottles covered by the pass no matter whether he received the full number or not

It was pointed out in revision that under Rule 314, all that is necessary is that the licensee should maintain the registers prescribed and that these should show the true accounts of transactions from day to day The Excise Inspector admitted that the amount of sales is entered in the evening of the day of sale, and it was contended that if the register be examined in the middle of the day, it cannot be expected to show a complete account of all the transactions which had taken place on that day and that it is only when the entries are completed in the evening that the record of transactions is correct and up to date.

Held that it is quite clear that Howeli Ram should not have shown 24 large bottles as received when only 18 bottles actually reached him But the mere making of an incorrect entry in the register is not in itself an offence It is only a wilful contravention of any regulations made under Ss. 58 or 59 which is punishable under S 65 Howeli Ram s explanation cannot be said to be unreasonable, and he is given the benefit of doubt If this conviction is set aside, those of Sunder Das and Ganpat Rai must also be set aside

Sunder Das and another Vs Emp —(L) 66 I C 200=3 L.L J. 195.

Penalty for consumption in chemist s shop &c

GG (1) If any chemist, druggist, apothecary or keeper of a dispensary allows any excisable article which has not been *bona fide* medicated for medicinal purposes to be consumed on his business premises by any person not employed in his business, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both

(2) If any person not employed as aforesaid consumes any such excisable article on such premises, he shall be punishable with a fine which may extend to two hundred rupees

(2) Nothing in sub-section (1) shall absolve any person who manufactures, sells or has possession of an excisable article on account of another person from liability to any punishment under this Act for the unlawful manufacture, sale or possession of such article

Penalty for offences not otherwise provided for

68. Whoever is guilty of any act or intentional omission in contravention of any of the provisions of this Act, or of any rule, notification or order made, issued or given thereunder, and not otherwise provided for in this Act, shall be punishable for every such act or omission with a fine which may extend to two hundred rupees

Attempt to commit offences punishable under the Act

69 Whoever attempts to commit or abets any offence punishable under this Act shall be liable to the punishment provided for the offence.

Penalty for excise officer making vexatious search &c

70 If an excise officer—

(*a*) vexatiously and unnecessarily enters or searches, or causes to be entered or searched, any place under colour of exercising any power conferred by this Act, or

(*b*) vexatiously and unnecessarily seizes the moveable property of any person on the pretence of seizing or searching for any article liable to confiscation under this Act, or

(*c*) vexatiously and unnecessarily searches, arrests or detains any person, or

(*d*) without lawful excuse ceases or refuses to perform or withdraws himself from the duties of his office unless expressly allowed to do so in writing by the Collector or unless he shall have given to his immediate superior officer two months' notice in writing of his intention to do so,

he shall be liable to imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Report by investigating officer for institution of proceedings

71. If on an investigation by an excise officer, empowered under section 46, sub-section (1), it appears that there is sufficient evidence to justify the prosecution of the accused, the investigating officer,

unless he submits the case for the orders of the Collector under section 80, shall submit a report (which shall for the purpose of section 190 of the Code of Criminal Procedure, 1898, be deemed to be a police-report) to a Magistrate having jurisdiction to enquire into or try the case and empowered to take cognizance of offences on police-reports.

Offences to be bailable

72 All offences punishable under this Act shall be bailable within the meaning of the Code of Criminal Procedure, 1898

Security for appearance in case of arrest without warrant

73 (1) The Local Government may empower any excise officer to grant bail, notwithstanding that such officer is not empowered under section 46.

(2) When a person is arrested under this Act, otherwise than on warrant, by a person or officer who is not empowered to grant bail, he shall be produced before or forwarded to—

(*a*) the nearest excise officer empowered to grant bail, or

(*b*) the nearest officer in charge of a police station, whoever is nearer.

(3) Whenever any person arrested under this Act, otherwise than on a warrant, is prepared to give bail, and is arrested by, or produced in accordance with sub-section (2) before, an officer empowered to grant bail, he shall be released upon bail, or, at the discretion of the officer releasing him, on his own bond.

(4) The provisions of sections 499 to 502, 513, 514 and 515 of the Code of Criminal Procedure, 1898, shall apply, so far as may be, in every case in which bail is accepted or a bond taken under this section.

any of those sections, he shall be liable to twice the punishment which might be imposed on a first conviction under this Act

Provided that nothing in this section shall prevent any offence which might otherwise have been tried summarily under chapter XXII of the Code of Criminal Procedure, 1898, from being so tried

Cognizance of offences

75 (1) No magistrate shall take cognizance of an offence punishable—

(*a*) under section 61 or section 66 except on his own knowledge or suspicion or on the complaint or report of an excise officer, or

(*b*) under section 62, section 63, section 64, section 65, section 68 or section 70, except on the complaint or report of the Collector or an excise officer authorised by him in that behalf

(2) Except with the special sanction of the Local Government, no magistrate shall take cognizance of any offence punishable under this Act, unless the prosecution is instituted within a year after the date on which the offence is alleged to have been committed

No complaint or report of Excise officer under S 61—Jurisdiction of Magistrate—Ss 61 75 —

" I am unable to find on the record any complaint or report of an Excise officer which would give jurisdiction to the Magistrate to take action under S 61 of the Punjab Excise Act of 1914 read with S 75 (1) In these circumstances I must hold that the Magistrate had no jurisdiction to take cognizance of the case " Accused acquitted

Harnam Singh Vs Emp—(P) 17 Cr L J 151=33 I C 631

Punjab Excise Act (I of 1914) S 75—Complaint by Police officer—Whether cognizable —

Petitioner Nihal Singh was convicted under S 61 (1) (a) and S 61 (2) (a) of the Excise Act and sentenced under the former to 6 M R I and a fine of Rs 40 and under the latter to 3 M R I —sentences to run concurrently He appealed to the Sessions Judge, but his appeal was rejected

In revision before the High Court, it was urged that the trial Court could not take cognisance of these offences because there was no complaint before it by an Excise officer, tho' there was a complaint made by a Police Inspector It was contended that this was not enough under S 75 of the Excise Act and in support of the contention Emp *vs* Nidar Singh 7 I C 713 was relied

upon. This was a ruling under the old Excise Act XII of 1896, and was relied upon only as laying down the principle that a complaint cannot be brought by a Police officer whose authority is limited to certain specific acts in matters relating to Excise. On behalf of the Crown it was pointed out that the present Excise Act differed materially from the old Act in this respect. Now under S. 11 of the new Act the Local Government is empowered to invest a Police officer with all or any of the powers of an Excise officer. Attention was drawn to Notification No. 1101—S. dated 25th June 1911 by which the Local Government had vested all Inspectors and Sub-Inspectors of Police with powers of an Excise officer of the first class. It was also urged that the powers so conferred not being limited to any specified Act or under any specified section, as was the case under the old Act, it must be taken that, by virtue of this Notification, the said Police officers are placed on the same footing as any other Excise officer. It was further contended that it was obvious that the Legislature wanted to extend the powers of cognisance, in Excise cases very materially as compared with the old Act, as shown by the fact that it is open to a Magistrate now to take cognisance of certain offences under the Excise Act on his own information.

Held "I think there is considerable force in the point of view put forward by the learned Counsel for the Crown, and the present case seems to be, therefore, distinguishable from the case dealt with in Emp. vs. Nidar Singh. Thus the legal objection raised cannot help the petitioner.

Convictions under both the Counts maintained, but sentence under Count No. 1 reduced to 3 M. R. I. to run concurrently with the sentence of 3 M. R. I. passed under the 2nd Count.

(L.) Nihal Singh Vs Emp.—A.I.R. (L.) 220—71 I.C. 599.

Presumption as to possession of offence in certain cases

16. Whenever any person is found in possession of—

(*a*) any still, utensil, implement or apparatus whatsoever or any part or parts thereof, such as are ordinarily used for the manufacture of any exciseable article other than tari,

(*b*) any materials which have undergone any process towards the manufacture of an exciseable article or from which an exciseable article has been manufactured,

it shall be presumed, until the contrary is proved, that this possession was in contravention of the provisions of this Act.

Liability of employer for offence committed by employee or agent

77 The holder of a license, permit or pass under this Act as well as the actual offender, shall be liable to punishment, for any offence punishable under section 61, section 62, section 63, section 64 or section 65, committed by any person in his employ or acting on his behalf as if he had himself committed the same, unless he shall establish that all due and reasonable precautions were exercised by him to prevent the commission of such offence

Provided that no person other than the actual offender shall be punished with imprisonment except in default of payment of fine

Confiscation of article in respect of which offence committed.

78 (1) Whenever an offence punishable under this Act has been committed,—

(*a*) every excisable article in respect of which such offence has been committed,

(*b*) every still, utensil, implement or apparatus and all materials in respect of or by means of which such offence has been committed;

(*c*) every excisable article lawfully imported, transported, manufactured, had in possession or sold along with, or in addition to, any excisable article liable to confiscation under clause (*a*);

(*d*) every receptacle, package and covering in which any excisable article, materials, still, utensil, implement or apparatus as aforesaid is or are found together with the other contents (if any) of such receptacle or package, and

(*e*) every animal, cart, vessel, raft or other conveyance used in carrying such receptacle, package covering or articles as aforesaid,

shall be liable to confiscation

Provided that when it is proved that the receptacles, animals, or other articles specified in clauses (*d*) and (*e*) are not the property of offender, they shall not be liable to confiscation if the owner thereof establishes that he had no reason to believe that such offence was being or was likely to be committed

(2) When in the trial of any offence punishable under this Act the magistrate decides that anything is liable to confiscation under sub-section (1), he may order confiscation ;

When confiscation may be ordered

Provided that in lieu of ordering confiscation he may give the owner of the thing liable to be confiscated an option to pay such fine as the magistrate thinks fit.

Forfeiture of liquor—S 78 —

Where the offence committed was merely a contravention of a Rule as to the keeping of registers *s e*, where the Accused merely made an incorrect entry in the registers, and no offence appeared to have been committed in respect of the liquor and of the empty bottles, Held that an order directing the forfeiture of the liquor and empty bottles in the shop was illegal and could not have been passed under S 78

Sunder Das Vs *Emp —3 L.L.J. 195*

Confiscation—S 78 —

Conveyances and animals liable to be confiscated under the Act are those on which illicit liquor is loaded An animal on which a man is merely riding with illicit liquor in his pockets does not come under that description

10 P.R 1898 Cr

79. When there is reason to believe that an offence under this Act has been committed, but the offender is not known or cannot be found and when anything or animal liable to confiscation under this Act and not in the possession of any person cannot be satisfactorily accounted for, the case shall be enquired into and determined by the Collector, who may order confiscation :

Further provisions for confiscation.

Provided that no such order shall be made until the expiration of one month from the date of seizing the thing or animal in question or without hearing the person (if any) claiming any right thereto, and the evidence (if any) which he produces in support of the claim :

Provided, further, that if the thing in question is liable to speedy and natural decay, or if the Collector is of opinion that the sale of the thing or animal in question would be for the benefit of its owner, the Collector may at any time direct it to be sold ; and the provisio

of this section shall, so far as may be, apply to the net proceeds of such sale.

Power of excise officers to compound offences

80. (1) The Collector may accept from any person who is reasonably suspected of having committed an offence punishable under section 62, section 65 or section 68 of this Act a sum of money by way of composition for such offence; and on the payment of such sum of money to the Collector the accused person if in custody shall be discharged and no further proceedings shall be taken against him in respect of such offence.

(2) The cancellation or suspension of any license, permit or pass under section 36 (*a*), (*b*) or (*c*) of this Act may be foregone or revoked by and at the sole discretion of the authority having power to cancel or suspend it on payment by the holder of such license, permit or pass of such penalty as such authority may fix.

(3) Where any exciseable article has been seized under the provisions of this Act, the Collector may, in his discretion, at any time before a Magistrate has passed an order under section 78, sub-section (2), release it on receiving payment of the value thereof.

SCHEDULE.

(*See section 2.*)

ENACTMENTS REPEALED.

Year.	Number	Short title.	Extent of repeal
		ACTS OF THE GOVERNOR-GENERAL IN COUNCIL	
1863 ..	XVI	The Excise (Spirits) Act, 1863 .	The whole.
1894 ..	VIII	The Indian Tariff Act, 1894 ..	Section 6.
1896 ..	XII	The Excise Act, 1896 ..	The whole
1906 .	VII	The Excise (Amendment) Act, 1906	The whole

THE UNITED PROVINCES EXCISE ACT, 1910.

UNITED PROVINCES ACT IV OF 1910.

(As modified up to the 30th April 1923.)

THE UNITED PROVINCES EXCISE ACT, 1910

UNITED PROVINCES ACT IV OF 1910

(As Modified up to the 30th April 1923)

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SCHEDULE.

United Provinces Act IV of 1910

PASSED BY THE LIEUTENANT-GOVERNOR OF THE UNITED PROVINCES OF AGRA AND OUDH IN COUNCIL.

The following Act of the Lieutenant Governor of the United Provinces of Agra and Oudh in Council received the assent of His Excellency the Governor General, on the 24th of February, 1910.

UNITED PROVINCES EXCISE ACT, 1910.[1]

(As modified up to the 1st March, 1915.)

WHEREAS it is expedient to consolidate and amend the law in force in the United Provinces relating to the import, export, transport, manufacture, sale and possession of intoxicating liquor and of intoxicating drugs; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY AND DEFINITIONS.

Short title.

1. (1) This Act may be called the United Provinces Excise Act, 1910; and

Extent

(2) It extends to the whole of the United Provinces.

Repeal of enactments

2. The enactments mentioned in the schedule are repealed to the extent specified in the fourth column thereof.

Interpretation

3. In this Act, unless there is something repugnant in the subject or context,—

"excise revenue"

(1) "excise revenue" means revenue derived or derivable from any duty, fee, tax, fine (other than a fine imposed by a court of law), or confiscation

1 This Act was amended by U. P. Act III of 1914 and U. P. Act I of 1915.

imposed or ordered under the provisions of this Act, or of any other law for the time being in force relating to liquor or intoxicating drugs ;

'excise officer'

(2) "excise officer" means a Collector, or any officer or person appointed or invested with powers under section 10 ,

'Excise Commissioner'

(3) "Excise Commissioner" means the officer appointed by the Local Government under section 10, sub-section (2), clause (*i*) ;

(4) Omitted by the Amendment Act of 1923 ;

'magistrate.'

(5) "magistrate" means any magistrate exercising powers not less than those of a magistrate of the second class, or any magistrate of the third class specially authorized in this behalf by the District Magistrate ;

'tari'

(6) "tari" means fermented or unfermented juice drawn from a cocoanut, palmyra, date or any other kind of palm tree ;

'pachwai'

(7) "pachwai" means fermented rice, millet or other grain, whether mixed with any liquid or not and any liquid obtained therefrom, whether diluted or undiluted ,

'spirit'

(8) "spirit" means any liquor containing alcohol obtained by distillation, whether it is denatured or not ;

'denatured'

[1](9) "denatured" means rendered unfit for human consumption in such manner as may be prescribed by the Local Government by notification in this behalf.

When it is proved that any spirit contains any quantity of any substance prescribed by the Local Government for the purpose of denaturation the Court may presume that such spirit is or contains or has been derived from denatured spirit

'beer'

(10) "beer" includes ale, stout, porter and all other fermented liquors made from malt ,

1 This clause was substituted for the original sub section (9) by U P. Act I of 1915, s. 6

(11) "liquor" means intoxicating liquor and includes spirits of wine, spirit, wine, tari, pachwai, beer and all liquid consisting of or containing alcohol; also any substance which the Local Government may by notification declare to be liquor for the purposes of this Act;

'liquor'

[1](12) "intoxicating drug" includes (*a*) cocaine, (*b*) ganja, bhang, charas, and every preparation and admixture of the same, and every intoxicating drink or substance prepared from any part of the hemp plant (*cannabis sativa*), from grain or from other material and not included in the term "liquor," but does not include opium or anything included within the meaning of that word as defined in the Opium Act, 1878;

'intoxicating drug'

(*c*) any other substance which the Local Government may specify by notification, together with every preparation and admixture of the same,

(13) "excisable article" means any liquor or intoxicating drug as defined by this Act,

'excisable article'

(14) "British India" means all territories and places within His Majesty's dominions which are for the time being governed by His Majesty through the Governor General of India or through any Governor or other officer subordinate to the Governor General of India,

'British India.'

(15) "India" means British India, together with any territories of any Native Prince or Chief under the suzerainty of His Majesty exercised through the Governor General of India or through any Governor or other officer subordinate to the Governor General of India;

'India'

(16) "sale," with its grammatical variations, includes any transfer otherwise than by way of gift,

'sale'

(17) "import" means to bring into the United Provinces,

'import'

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1 This sub-section was substituted for the original sub-section (12) by U. P. Act III of 1914, s. 2.

'export'' (18) "export" means to take out of the United Provinces,

'transport' (19) "transport" means to move from one place to another within the United Provinces;

'manufacture' (20) "manufacture" includes every process, whether natural or artificial, by which any excisable article is produced or prepared, and also redistillation and every process for the rectification, flavouring, blending or colouring of liquor;

'to bottle' (21) "to bottle" means to transfer from a cask or other vessel to a bottle or other receptacle for the purpose of sale, whether any process of rectification be employed or not, and bottling includes rebottling;

"place (22) "place" includes a house, building, shop, room, booth, tent and vessel;

'cocaine' [1](23) "cocaine" includes coca leaves, any alkaloid or substance prepared from the coca plant and any preparation or admixture of any of the above.

Power of Local Government to declare what is to be deemed liquor 4 (1) The Local Government may by notification declare any substance to be "liquor" for the purposes of this Act or any portion thereof.

'Country liquor' and 'foreign liquor' (2) The Local Government may, with the previous sanction of the Government of India, in like manner and for the like purposes declare what shall be deemed to be "country liquor" and "foreign liquor" respectively.

Power of Local Government to specify intoxicating drugs &c 5. The Local Government may by notification specify as an intoxicating drug any substance other than those mentioned in section 3 (12) (*a*), [2][and (*b*)], and may in like manner declare what shall be deemed to be ganja, bhang, charas, or other substance so mentioned or specified

1 This sub section was added by U P Act III of 1914 s 3

2 This word, brackets and letter were added by U P Act III of 1914 s 4

Power of Local Government to declare limit of sale by retail

6 (1) The Local Government may by notification declare, with respect either to the whole of the United Provinces or to any local area comprised therein and as regards purchasers generally or any specified class of purchasers, and generally or for any specified occasion, what quantity of any excisable article shall, for the purposes of this Act, be the limit of sale by retail.

Sale by wholesale

(2) The sale of any excisable article in any quantity in excess of such quantity as the Local Government has under sub section (1) declared to be the limit of sale by retail shall be deemed to be sale by wholesale.

Possession of excisable article by wife clerk or servant

7 When any excisable article is in the possession of a person's wife, clerk or servant on account of that person, it shall, for the purposes of this Act, be deemed to be in the possession of that person

Explanation—A person employed temporarily or on a particular occasion in the capacity of a clerk or servant is a clerk or servant within the meaning of this section

Saving of enactments

8 Save as provided by the schedule, nothing contained in this Act shall affect the provisions of the Sea Customs Act, 1878, the Cantonments Act, 1889, or the Indian Tariff Act, 1894, or any rule or order made thereunder

CHAPTER II

Establishment and Control

9 Omitted by the Amendment Act of 1923

Administration of Excise department in districts

10. (1) The administration of the Excise department in any district shall, unless the Local Government otherwise directs, be under the charge of the Collector of that district

Power of Local Government

(2) The Local Government may by notification applicable to the whole of the United Provinces or to any district or local area comprised therein,—

conferred by or under this Act or by or under any other law for the time being in force relating to excise revenue.

Collector subject to control of the Excise Commissioner.

11. (1) The Collector shall in all proceedings under this Act be subject to the control of the Excise Commissioner, and all orders passed by a Collector under this Act shall be appealable to the Excise Commissioner in manner provided by such rules as the Local Government may frame in this behalf.

Revision of orders passed by Collector or Excise Commissioner.

(2) The Local Government may revise any orders passed by the Collector or by the Excise Commissioner.

CHAPTER III.

IMPORT, EXPORT AND TRANSPORT.

Import of excisable articles.

12. (1) No excisable article shall be imported unless—

(*a*) the Local Government has given permission, either general or special, for its import ;

(*b*) such conditions (if any) as the Local Government may impose have been satisfied ; and

(*c*) the duty (if any) imposed under section 28 has been paid or a bond has been executed for the payment thereof.

(2) Sub-section (1) shall not apply to any article which has been imported into British India and was liable on such importation to duty under the Indian Tariff Act, 1894, or the Sea Customs Act, 1878.

(3) Clauses (*a*) and (*b*) of sub-section (1) shall not apply to liquor manufactured in British India and declared under section 4 to be foreign liquor.

Export and transport of excisable articles.

13. No excisable article shall be exported or transported unless—

(*a*) the duty (if any) imposed under section 28 ; or

(*b*) if the article was previously imported, the duty (if any) imposed on its importation under the Indian Tariff Act, 1894, or the Sea Customs Act, 1878,

has been paid, or a bond has been executed for the payment thereof.

Powers of Local Government to prohibit import export and transport of excisable article

14 The Local Government may by notification,—

(*a*) with the sanction of the Governor General in Council, prohibit the import or export of any excisable article into or from the United Provinces or any part thereof, or

(*b*) prohibit the transport of any excisable article.

Passes necessary for import export and transport

15. No excisable article exceeding such quantity as the Local Government may prescribe by notification, either generally for the whole of the United Provinces or for any local area comprised therein, shall be imported, exported or transported except under a pass issued under the provisions of the next following section

Provided that in the case of duty paid foreign liquor other than denatured spirit such passes shall be dispensed with, unless the Local Government shall by notification otherwise direct, with respect to any local area

Provided also, unless the Local Government shall otherwise direct, that no pass shall be required for the transport of any excisable article exported under a pass issued by an officer duly authorized in this behalf from any place beyond the limits of the United Provinces to any other place beyond the said limits.

Grant of passes for import, export and transport

16 Passes for the import, export or transport of excisable articles may be granted by the Collector.

Such passes may be either general for definite periods and kinds of excisable articles or special for specified occasions and particular consignments only.

CHAPTER IV.

MANUFACTURE, POSSESSION AND SALE.

Manufacture of excisable articles prohibited except under the provisions of this Act

17. (1) (*a*) No excisable article shall be manufactured;

(*b*) no hemp plant (*cannabis sativa*) shall be cultivated;

(*c*) no portion of the hemp plant (*cannabis sativa*) from which any intoxicating drug can be manufactured shall be collected;

(*d*) no liquor shall be bottled for sale; and

(*e*) no person shall use, keep or have in his possession any materials, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing any excisable article other than tari,

except under the authority and subject to the terms and conditions of a licence granted in that behalf by the Collector

(2) No distillery or brewery shall be constructed or worked except under the authority and subject to the terms and conditions of a licence granted in that behalf by the Excise Commissioner under section 18.

Establishment of licensing of distilleries and warehouses

18. The Excise Commissioner may—

(*a*) establish a distillery in which spirit may be manufactured under a licence granted under section 17 on such conditions as the Local Government deems fit to impose,

(*b*) discontinue any distillery so established;

(*c*) license, on such conditions as the Local Government deems fit to impose, the construction and working of a distillery or brewery;

(*d*) establish or license a warehouse wherein any excisable article may be deposited and kept without payment of duty; and

(*e*) discontinue any warehouse so established

Removal of excisable article from distillery, &c.

19. No excisable article shall be removed from any distillery, brewery, warehouse, or other place of storage established or licensed under this Act, unless the duty (if any) imposed under section 23 has been paid or a bond has been executed for the payment thereof.

Possession of excisable articles in excess of the quantity prescribed by Government prohibited except under permit.

20. (1) No person not being licensed to manufacture, cultivate, collect or sell any excisable article shall have in his possession any quantity of any excisable article in excess of such quantity as the Local Government has under section 6 declared to be the limit of sale by retail except under a permit granted by the Collector in that behalf.

(2) Sub-section (1) shall not extend to—

Exceptions.

(*a*) any foreign liquor (other than denatured spirit) in the possession of any common carrier or warehouseman as such; or

(*b*) any foreign liquor which has been purchased by any person for his bona fide private consumption and not for sale.

(3) A licensed vender shall not have in his possession at any place other than that authorized by his licence any quantity of any excisable article in excess of such quantity as the Local Government has under section 6 declared to be the limit of sale by retail, except under a permit granted by the Collector in that behalf.

Prohibition and restriction of possession of excisable articles in certain cases.

(4) Notwithstanding anything contained in the foregoing sub-sections the Local Government may by notification prohibit the possession by any person or class of persons, either in the United Provinces or in any specified local area, of any excisable article, or restrict such possession by such conditions as it may prescribe.

Sale of excisable articles without licence prohibited.

21. No excisable article shall be sold without a licence from the Collector; provided that—

(1) a person licensed under section 17 to cultivate or collect hemp plant (*cannabis sativa*) may sell without a license those portions

of the plant from which any intoxicating drug can be manufactured to any person licensed under this Act to deal in the same or to any officer whom the Excise Commissioner may prescribe ,

(2) a licence for sale in more than one district of the United Provinces shall be granted only by the Excise Commissioner ,

(3) nothing in this section applies to the sale of any foreign liquor legally procured by any person for his private use and sold by him or by auction on his behalf or on behalf of his representatives in interest upon his quitting a station or after his decease

Prohibition of sale to persons under the age of eighteen years.

22. No licensed vendor and no person in the employ of such vendor and acting on his behalf shall sell or deliver any liquor or intoxicating drug to any person apparently under the age of eighteen years whether for consumption by such person or by any other person and whether for consumption on or off the premises of such vendor

Prohibition of employment of persons under the age of eighteen years and of women

23 (1) No person who is licensed to sell liquor for consumption on his premises shall, during the hours in which such premises are kept open for business, employ or permit to be employed, either with or without remuneration, any person under the age of eighteen years in any part of such premises in which such liquor or spirit is consumed by the public

(2) No person who is licensed to sell foreign liquor for consumption on his premises shall, without the previous permission in writing of the Excise Commissioner, during the hours in which such premises are kept open for business, employ or permit to be employed, either with or without remuneration, any woman in any part of such premises in which liquor is consumed by the public

(3) Every permission granted under sub section (2) shall be endorsed on the licence, and may be modified or withdrawn

Grant of exclusive privilege of manufacture &c.

24 Subject to the provisions of section 31 the Excise Commissioner may grant to any person a licence for the exclusive privilege—

(1) of manufacturing or of supplying by wholesale, or of both, or

(2) of selling by wholesale or by retail, or

(3) of manufacturing or of supplying by wholesale, or of both, and of selling by retail,

any country liquor or intoxicating drug within any local area.

Manufacture and sale of liquor in military cantonments.

25 Within the limits of any military cantonment, and within such distance from those limits as the Local Government in any case may prescribe, no licences for the manufacture or sale of liquor or for an exclusive privilege in respect of liquor under section 24 shall be granted unless with the consent of the Commanding Officer.

Grantee of exclusive privilege may let or assign.

26 Subject to the conditions of his licence the grantee of any exclusive privilege may let or assign the whole or any portion of his privilege, but no lessee or assignee of such privilege or portion of a privilege shall exercise any rights as such unless and until a licence has been granted to him by the Excise Commissioner on application made by the grantee.

Contract by Licensee to sell drugs with another—Whether amounts to transfer or sub lease —Rule 82, S 26 —

The defendants obtained a license from Government to sell drugs, and they thereupon entered into a contract with the plaintiff to the effect that in consideration of the plaintiff advancing some money, the defendants would give the plaintiff the profits derived to the extent of one anna out of 6 annas, and in the event of there being a loss, the plaintiff would suffer the loss to the extent of one anna The Munsiff gave a decree on a suit by the plaintiff The Lower Appellate Court reversed the decree holding that the contract was illegal having regard to the provisions of the Excise Act and the rules there under *i e*, Rule 82 *i e*, Transfers and sub-leases of licenses are not permitted except under the sanction of the Collector.

Held that the contract was neither a transfer nor a sub lease of the license inasmuch as it did not entitle him to sell any goods of any sort covered by the license Appeal allowed

Sham Bihari Lal Vs Malhi and another—39 A 107.

Recovery by grantee of exclusive privilege of sums due to him.

27. Any grantee, lessee or assignee as aforesaid may recover from any person holding under him any money due to him in his capacity of grantee, lessee or assignee as if it were an arrear of rent recoverable under the law for the time being in force with regard to landholder and tenant

Provided that nothing contained in this section shall affect the right of any such grantee, lessee or assignee to recover by civil suit any such amount due to him from any such person as aforesaid.

CHAPTER V.

DUTIES AND FEES.

Duty on excisable articles

28 A duty, at such rate or rates as the Local Government shall direct, may be imposed, either generally or for any specified local area, on any excisable article—

(*a*) imported in accordance with the provisions of section 12 (1); or

(*b*) exported in accordance with the provisions of section 13; or

(*c*) transported, or

(*d*) manufactured, cultivated or collected under any license granted under section 17, or

(*e*) manufactured in any distillery established, or any distillery or brewery licensed, under section 18,

Provided as follows —

(*i*) duty shall not be so imposed on any article which has been imported into British India and was liable on such importation to duty under the Indian Tariff Act, 1894, or the Sea Customs Act, 1878,

(*ii*) the duty on denatured spirit or beer manufactured in India shall, unless the Local Government, with the previous sanction of the Governor-General in Council, otherwise directs, be

equal to the duty to which denatured spirit or beer respectively imported into British India by sea is liable under the Indian Tariff Act, 1894, or any other law for the time being in force relating to the duties or customs on goods imported into British India

Explanation—Duty may be imposed under this section at different rates according to the places to which any excisable article is to be removed for consumption, or according to the varying strengths and quality of such article

Manner in which duty may be levied

29 Subject to such rules as the Excise Commissioner may prescribe to regulate the time, place and manner of payment, such duty may be levied in one or more of the following ways as the Local Government may by notification direct —

(*a*) in the case of excisable articles imported under section 12 (1)—

(i) by payment either in the province of import or in the province or territory of export, or

(ii) by payment upon issue for sale from a warehouse established or licensed under section 18 (*d*),

(*b*) in the case of excisable articles exported under section 13—

by payment either in the province of export or in the province or territory of import,

(*c*) in the case of excisable articles transported—

(i) by payment in the district from which the excisable article is to be transported, or

(ii) by payment upon issue for sale from a warehouse established or licensed under section 18 (*d*),

(*d*) in the case of intoxicating drugs manufactured under any licence granted under section 17 (1)—

(i) by a rate charged upon the quantity manufactured under a licence granted under the provisions of section 17 (1) (*i*) or issued from a warehouse established or licensed under section 18 (*d*),

(ii) where the intoxicating drug is manufactured from hemp plant (*cannabis sativa*) cultivated or collected under a license granted under the provisions of section 17 (1) (*b*) and (*c*), by an acreage rate levied on the cultivation, or by a rate charged upon the amount collected;

(*c*) in the case of spirit or beer manufactured in any distillery established or any distillery or brewery licensed under section 18—

(i) by a rate charged upon the quantity produced or issued from the distillery or brewery, as the case may be, or issued from a warehouse established or licensed under section 18 (*d*),

(ii) by a rate charged in accordance with such scale of equivalents, calculated on the quantity of materials used or by the degree of attenuation of the wash or wort, as the case may be, as the Local Government may prescribe.

Provided that, where payment is made upon issue of an excisable article for sale from a warehouse established or licensed under section 18 (*d*), it shall be at the rate of duty which is in force on that article on the date when it is issued from the warehouse.

Payment for exclusive privileges

30. Instead of or in addition to any duty leviable under this chapter the Excise Commissioner may accept payment of a sum in consideration of the grant of the licence for any exclusive privilege under section 24.

CHAPTER VI.

LICENCES, PERMITS AND PASSES.

Form and conditions of licences, &c.

31 Every license, permit or pass granted under this Act shall be granted—

(*a*) on payment of such fees, (if any),

(*b*) subject to such restrictions and on such conditions,

(*c*) shall be in such form and contain such particulars, as the Excise Commissioner may direct either generally or in any particular instance in this behalf; and

(*d*) shall be granted for such period as the Local Government may, in like manner, direct.

Saving of licences in force at the commencement of this Act

32 Every licence which was granted under any section of the Excise Act, 1896, and is in force at the commencement of this Act, shall be deemed to have been granted under the corresponding section of this Act, and shall (unless previously cancelled, suspended, withdrawn or surrendered under this chapter) remain in force for the period for which it was granted

Power of authority granting licence to require execution of counterpart agreement, &c

33. Any authority granting a licence under this Act may require the grantee to execute a counterpart agreement in conformity with the tenor of his licence and to give such security for the performance of such agreement or to make such deposit in lieu of security as such authority may think fit

Power to cancel or suspend licences &c

34. (1) Subject to such restrictions as the Local Government may prescribe, the authority granting any licence, permit or pass under this Act may cancel or suspend it—

(*a*) if any duty or fee payable by the holder thereof be not duly paid, or

(*b*) in the event of any breach by the holder of such licence, permit or pass, or by his servants, or by any one acting on his behalf with his express or implied permission, of any of the terms or conditions of such licence, permit or pass, or

(*c*) if the holder thereof is convicted of any offence punishable under this Act or any other law for the time being in force relating to revenue, or of any cognizable and non-bailable offence, or of any offence punishable under the Merchandise Marks Act, 1889, or of any offence punishable under sections 482 to 489 (both inclusive) of the Indian Penal Code; or

(*d*) where a licence, permit or pass has been granted on the application of the grantee of an exclusive privilege under this Act, on the requisition in writing of such grantee, or

(*c*) if the conditions of the licence or permit provide for such cancellation or suspension at will

(2) Where a licence, permit or pass held by any person is cancelled under clause (*a*), (*b*) or (*c*) of sub section (1), the authority aforesaid may cancel any other licence, permit or pass granted to such person under this Act or under any other law for the time being in force relating to excise revenue or under the Opium Act, 1878.

No compensation or refund claimable for cancellation or suspension of licence &c., under this section

(3) The holder shall not be entitled to any compensation for the cancellation or suspension of his licence, permit or pass under this section nor to a refund of any fee paid or deposit made in respect thereof

Further power to cancel licence

35 (1) Whenever the authority granting a licence under this Act considers that such licence should be cancelled for any cause other than those specified in section 34, it shall remit a sum equal to the amount of the fees payable in respect thereof for fifteen days, and may cancel the licence either—

(*a*) on the expiration of fifteen days' notice in writing of its intention to do so, or

(*b*) forthwith without notice

Compensation in the case of cancellation

(2) If any licence be cancelled under clause (*b*) of sub section (1), in addition to the sum remitted as aforesaid, there shall be paid to the licensee such further sum by way of compensation as the Excise Commissioner may direct

Refund of fee or deposit

(3) When a license is cancelled under this section, any fee paid in advance or deposit made by the licensee in respect thereof shall be refunded to him, less the amount (if any) due to Government

Surrender of licence to sell by retail

36 Any holder of a license to sell by retail under this Act may surrender his licence on the expiration of one month's notice in writing given by him to the Collector of his intention to surrender the same and on payment of the fee payable for the licence for the whole period for which it would have been current but for such surrender.

(*g*) for the prohibition of the sale of any excisable article to any person or class of persons,

(*h*) for the grant of expenses to witnesses and compensation for loss of time to persons released under section 19 on the ground that they have been improperly arrested and to persons charged before a magistrate with offence punishable under this Act but acquitted,

(*i*) regulating the power of excise officers to summon witnesses from a distance under the provisions of section 49,

(*j*) for declaring the excise officers to whom, and the manner in which, information or aid should be given under section 56,

(*k*) for the prohibition of the employment by the licence holder of any person or class of persons to assist in his business in any capacity whatsoever,

(*l*) for the prevention of drunkenness, gambling or disorderly conduct in or near any licensed premises, and the meeting or remaining of persons of bad character in such premises

(3) The power conferred by this section for making rules is subject to the condition that the rules be made after previous publication

Provided that any such rules may be made without previous publication if the Local Government considers that they should be brought into force at once

41 The Excise Commissioner subject to the previous sanction of the Local Government may make rules—

(*a*) regulating the manufacture, supply, storage or sale of any excisable article including—

(i) the erection, alteration, repair, inspection, supervision, management and control of any place for the manufacture, supply, storage or sale of such article, and the fittings, implements and apparatus to be maintained therein,

(ii) the cultivation of the hemp plant (*cannabis sativa*),

(iii) the collection of portions of the hemp plant (*cannabis sativa*) from which any intoxicating drug can be manufactured and the manufacture of any intoxicating drug therefrom ;

(*b*) regulating the deposit of any excisable article in a warehouse and the removal of any excisable article from any such warehouse or from any distillery or brewery ;

(*c*) prescribing the scale of fees or the manner of fixing the fees payable in respect of any licence, permit or pass, or of the storing of any excisable article.

Explanation—Fees may be prescribed under this sub-clause at different rates for different classes of licences, permits, passes, or storage, and for different areas.

(*d*) regulating the time, place and manner of payment of any duty or fee ;

(*e*) prescribing the restrictions under and the conditions on which any licence, permit or pass may be granted, including provision for the following matters :—

(i) the prohibition of the admixture with any excisable article of any substance deemed to be noxious or objectionable ;

(ii) the regulation or prohibition of the reduction of liquor by a licensed manufacturer or licensed vendor from a higher to a lower strength ;

(iii) the fixing of the strength, price or quantity in excess of or below which any excisable article shall not be sold or supplied, and of the quantity in excess of which denatured spirit shall not be possessed, and the prescription of a standard of quality for any excisable article ;

(iv) the prohibition of sale except for cash ;

(v) the fixing of the days and hours during which any licensed premises may or may not be kept open, and the closure of such premises on special occasions ;

(vi) the specification of the nature of the premises in which any excisable article may be sold and the notices to be exposed at such premises ;

(vii) the form of the accounts to be maintained and the returns to be submitted by licence-holders ; and

(viii) the regulation of the transfer of licences ;

(*f*) (i) declaring the process by which spirit manufactured in British India shall be denatured ;

(ii) for causing such spirit to be denatured through the agency or under the supervision of its own officers ;

(iii) for ascertaining whether such spirit has been denatured ;

(*g*) providing for the destruction or other disposal of any excisable article deemed to be unfit for use ;

(*h*) regulating the disposal of confiscated articles.

CHAPTER VIII.

SPECIAL PROVISIONS RELATING TO THE MANUFACTURE, SUPPLY AND SALE OF TARI.

Manufacture of tari

42. In local areas where the Local Government so notifies—

(*a*) no tari-producing tree shall be tapped ;

(*b*) no tari shall be drawn from any tree,—

except under the authority and subject to the terms and conditions of a licence granted in that behalf by the Collector or under the provisions of section 45 :

Provided that in any such local area the Local Government may by notification declare that these provisions shall not apply to trees tapped or tari drawn under such special conditions as the Excise Cammissioner may prescribe.

Sale of tari.

43. In any such area as aforesaid a person having the right to the tari drawn from any tree may sell the same without a licence to a person licensed to manufacture or sell tari under this Act.

Power of Local Government to exempt from provisions of section 42 area in which exclusive privilege for manufacture, &c., of tari has been granted.

44. Where a licence for the exclusive privilege of manufacture, supply or sale of tari in any local area has been granted under the provisions of section 24, the Local Government may by notification direct that the provisions of section 42 shall not apply to such area.

Grant of licence by grantee of exclusive privilege of manufacturing tari.

45 Where a licence for the exclusive privilege of manufacturing tari has been granted under section 24, the Local Government may declare that the written permission of the grantee to draw tari shall have the same force and effect as a licence from the Collector for that purpose under section 42.

Duty on tari

46. A duty at such rate or rates as the Local Government shall direct may be imposed either generally or for any specified local area, on any tari manufactured under any licence granted under section 42. Such duty may be levied by a tax on each tree from which tari is drawn.

Power to make rules.

47. In particular and without prejudice to the generality of the foregoing provisions the Local Government may make rules regulating the tapping of tari-producing trees and the drawing of tari from such trees, the marking of such trees and the maintenance of such marks in any area to which the provisions of section 42 have been applied.

CHAPTER IX.

POWERS AND DUTIES OF OFFICERS, ETC.

Power to enter and inspect places of manufacture and sale.

48. The Excise Commissioner, or a Collector, or any [1][officer of the Excise department] not below such rank as the Local Government may prescribe, or any police officer duly empowered in that behalf,

[1] This expression was substituted for the original expression "other excise officer" U. P. Act I of 1915, s. 2.

may enter and inspect, at any time by day or by night, any place in which any licensed manufacturer carries on the manufacture of or stores any excisable article ; and may enter and inspect, at any time within the hours during which sale is permitted, and at any other time during which the same may be open, any place in which any excisable article is kept for sale by any licensed person ; and may examine, test, measure or weigh any materials, stills, utensils, implements, apparatus or excisable article found in such place , and may seize any measures, weights or testing instruments which he has reason to believe to be false.

Powers of excise officers to investigate into offences punishable under this Act

49. (1) [1][A police officer not below the rank of an officer in charge of a police station and an officer of the Excise department not below such rank as the Local Government may prescribe may investigate] into any offence punisbable under this Act committed within the limits of the area in which such officer exercises jurisdiction

(2) [2][Any such officer may] exercise the same powers in respect of such investigation as an officer in charge of a police station may exercise in a cognizable case under the provisions of chapter XIV of the Code of Criminal Procedure, 1898, and if specially empowered in that behalf by the Local Government, such officer may, without reference to a magistrate, and for reasons to be recorded by him in writing, stop further proceedings against any person concerned or supposed to be concerned in any offence punishable under this Act into which he has investigated.

Powers of arrest seizure and detention

50. Any officer of the excise, police, salt, opium or land revenue departments, not below such rank and subject to such restrictions as the Local Government may prescribe, and any other person duly empowered in this behalf, may arrest without warrant any person found committing an offence punishable under section 60, section 62, section 63 or section 65 , and may seize and detain any excisable or other article which he has reason to believe to be liable to confiscation under this Act

or other law for the time being in force relating to excise revenue and may detain and search any person upon whom, and any [1]vessel, vehicle, animal, package, receptacle or covering in or upon which he may have reasonable cause to suspect any such article to be

Power of Collector to issue warrant of arrest

51 The Collector may issue a warrant for the arrest of any person whom he has reason to believe to have committed any offence punishable under section 60, section 60A, section 62, section 63, or section 65[1]

Power of Collector or Magistrate to issue a search warrant

52 If a Collector or a Magistrate, upon information obtained, has reason to believe that an offence punishable under section 60, section 62, section 63 or section 65 has been or is likely to be committed, he may issue a warrant for the search for any excisable article, materials, still, utensil, implement or apparatus in respect of which the alleged offence has been or is likely to be committed

Power of Collector or excise officer to search without warrant

53 (1) [1][Whenever a Collector, or an officer of the Excise department not below such rank as the Local Government may prescribe or a [2]police officer not below the rank of an officer in charge of a police station has reason to believe that an offence punishable under section 60, section 61, section 62, section 63 or section 65] has been, is being or is likely to be committed in any place, and that a search-warrant cannot be obtained without affording the offender an opportunity of escape or of concealing evidence of the offence, he may, at any time, by day or night, enter and search such place

Provided that [2][any] officer other than a Collector taking action under this sub section shall before entering such place record the grounds of his belief as aforesaid

Further powers of seizure detention search and arrest

(2) [3][The Collector or other officer] as aforesaid may seize anything found in such place which he has reason to believe to be liable to confiscation under this Act, and may detain and search and, if he thinks proper, arrest any person found in

1 These words were substituted for the original words and figures in section 53 (1) ending with the words and figures "or section 65" by U P Act I of 1915, s. 4 (1).

2 This word was substituted for the words "an excise" by U P Act I of 1915, s 4 (1).

3 These words were substituted for the original words "Every Collector or other officer" by U P Act I of 1915, s 4 (2)

such place whom he has reason to believe to be guilty of such offence as aforesaid.

Search of house for Cocaine by Excise Sub Inspector—No warrant—no reasons recorded, offence.—S. 53 and 448 I. P. C

The Excise Sub Inspector of Wazirgung searched the applicant's house for cocaine He omitted to record his reasons as required by S 53 of the Excise Act for not first obtaining a search warrant from a Magistrate On this the applicant filed a complaint against him of various offences ranging from defamation to dacoity. That complaint was dismissed under S 203 Cr P C In revision, it was urged that the real offence was one of criminal trespass Held —"Now admitting that it might be an act of trespass to enter the applicant's house without complying with all the formalities required by law a criminal charge under S 448 requirs something more It requires an intention either to commit an offence or to intimidate, insult or annoy the person in possession There is no indication in this case of any such intention ndd the complaint was, therefore, rightly dismissed I reject the present application"

Syed Alli Abbas Vs Subba Singh and another—88 I C 725=26 Cr L. J. 1205.

Procedure relating to arrests, searches, &c.

54 The provisions of the Code of Criminal Procedure, 1898, relating to arrests, searches, search-warrants, production of persons arrested and investigation into offences shall be held to be applicable, so far as may be, to all action taken in these respects under this Act:

Provided that an offence punishable under section 60, section 60A, section 61, section 62, or section 65 may be investigated into without the order of a magistrate, and that any warrant issued by the Collector under section 51 or section 52 may be executed by any officer selected by the Collector for that purpose

Offences to be bailable

55 All offences punishable under this Act shall be bailable within the meaning of the Code of Criminal Procedure, 1898, and the provisions of that Code in respect of bail shall be applicable thereto.

Duty of officers of certain departments to report offences and to assist excise officers

56. Every officer of the police, salt, opium and land revenue departments shall be bound to give immediate information to an [1][officer of the Excise department] of all breaches of any of the provisions of this Act which may come to his knowledge,

1 This expression was substituted for the original expression "excise officer" by U P. Act I of 1915, s 2

and to aid any [1][officer of the Excise department] in carrying out the provisions of this Act upon request made by such officer.

Duty of landholders and others to give information.

57. (*a*) Every owner or occupier of land and the agent of any such owner or occupier of land on which—

(*b*) Every lambardar, village headman, village accountant or village policeman in whose village—

there shall be any manufacture of any excisable article not licensed under this Act, or any unlawful cultivation or collection of any plants from which an intoxicating drug can be produced, shall be bound to give notice of the same to a magistrate or to an officer of the excise, police or land revenue department immediately the same shall have come to his knowledge.

Duty of officers in charge of police station to take charge of articles seized.

58. Every officer in charge of a police station shall take charge of and keep in safe custody, pending the orders of a magistrate or of the Collector, all articles seized under this Act which may be delivered to him; and shall allow any [1][officer of the Excise department] who may accompany such articles to the police station, or may be deputed for the purpose by his superior officer, to affix his seal to such articles and to take samples of and from them. All samples so taken shall also be sealed with the seal of the officer in charge of the police station.

Power to close shops for the sake of public peace.

59. The District Magistrate by notice in writing to the licensee may require that any shop in which any excisable article is sold shall be closed at such times or for such period as he may think necessary for the preservation of the public peace.

If a riot or unlawful assembly is apprehended or occurs in the vicinity of any such shop, a magistrate of any class or any police officer above the rank of constable who is present, may require such shop to be kept closed for such period as he may think necessary:

[1] This expression was substituted for the original expression "excise officer" by U. P. Act I of 1915, s. 2.

Provided that where any such riot or unlawful assembly occurs the licensee shall, in the absence of such magistrate or police officer, close his shop without any order.

CHAPTER X.

OFFENCES AND PENALTIES.

Penalty for unlawful import, export transport, manufacture, possession, sale, &c

60. Whoever, in contravention of this Act or of any rule or order made under this Act, or of any licence, permit or pass obtained under this Act—

(*a*) imports, exports, transports or possesses any excisable article; or

(*b*) manufactures any excisable article; or

(*c*) cultivates any hemp plant (*cannabis sativa*); or

(*d*) collects or sells any portion of the hemp plant (*cannabis satia*) from which any intoxicating drug can be manufactured; or

(*e*) constructs or works any distillery or brewery; or

(*f*) uses, keeps or has in his possession any materials, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing any excisable article other than tari; or

(*g*) removes any excisable article from any distillery, brewery or warehouse licensed, established or continued under this Act; or

(*h*) bottles any liquor for purposes of sale; or

(*i*) sells any excisable article, save in the case provided for by section 61; or

(*j*) taps or draws tari from any tari-producing tree in areas notified under section 42;

[1] shall be punished, if the offence is committed in respect of cocaine, with imprisonment which may extend to two years or with fine or with both, and in any other case with imprisonment which may extend to one year or with fine or with both."

1 This portion of section 60 was substituted for the original portion by U.P. Amendment Act of 1923.

What amounts to Import of liquor—Ss 3—60 (a)

The Accused booked liquor from Jaipur a Native State to Muthra in U P but did not take delivery of it The Magistrate convicted him of an offence under 60 (a) and the Sessions Judge confirmed the conviction

Held on revision " as a general rule a conviction under a section which provides a penalty for a variety of acts done in contravention of a statute is bad for duplicity where the section contains a variety of inconsistent alternatives To convict a man simply of an offence under S 60 (o) would be bad for duplicity because it might mean a conviction either for importing or for exporting and it is impossible for a man to do both in the same act Importing is defined in S 3 as bringing into the U P and exporting as taking out of the U P and it is a physical impossibility for anybody to do these two things by the same act. I say nothing to discourage the view that a person who exports from outside the U P to a warehouse inside the U P of which he is really the proprietor or temporary possessor, even under o false name, is in fact committing an offence under the act of importing into the U P altho' he is also the person who exports from outside It is perfectly possible for me to send an article for myself from the High Court at Allahabad to my Chambers in London, and if I did so with a dutiable article without declaration, I should be guilty of importing into England But it is necessary that the conviction should state the act of which the Accused is found guilty and the particular breach of the Act established against him by his Act so found To book liquor from Jaipur does not constitute an offence defined in any of the alternatives under S 60 The sentence in which the Sessions Judge upholds the conviction runs as follows" —" The contention that the offence was committed at Jaipur, if anywhere, is unsound for the importation was made to Muthra ' This is a contradiction in terms You cannot import to a place unless you are the person taking delivery inside the area in respect of which *the word "import" is used To import to Muthra means that you are the* person taking the goods in the U P at Muthra or from some other place in the U P to Muthra Of course, a person who sends goods from a Native State is not doing anything of the kind It is quite clear on the facts formed, the Sessions Judge ought to have quashed the conviction Conviction quashed

Munshi Lal Vs *Emp (All) 66 I C 184=20 A L J 198*

Possession of liquor and materials for manufacture—other persons living in the same house—presumption—S 60 (a) (f) —

The Accused was convicted under S 60 (a) and (f) on the ground that fermented liquor, and materials for the purpose of manufacturing the same were found in the house which was occupied by him Two other persons, viz, his wife and a young brother in law aged 17 or 18 also lived with him

It was urged in revision that the prosecution had not excluded the possibility of the liquor having been manufactured by the wife or the brother in law, and that there was no evidence to justify the finding that either of the articles were in the possession of the Accused Held that the applicant who must be presumed to have had full authority over his wife and this young brother in-law could not have permitted the manufacture by them unless he was himself a party to it Where a person is at liberty to stop something being done in his house and is proved not to have done so, the presumption is that he is an accessory to the doing of that thing, and he may be held in possession of the materials used in the doing of it Conviction confirmed

Maiku v. Emp (Oudh) 86 I C 707=26 Cr L J 851

Failure of prosecution to produce a necessary witness—Duty of Court—S 60 (a) (f)—

This is an appeal by Government against an acquittal The person acquitted was Maiku Pasi The charge was under section 60 (a) and (f) of the U P Excise Act IV of 1910 The case for the prosecution is that Mr Shambhu Nath Misra, Excise Inspector, received information from an informer whose name is not disclosed that Maiku had manufactured liquor overnight. He recorded his reasons for dispensing with the warrant, which were that Maiku would have an opportunity of making away with the liquor and the instruments of distillation He then went to Maiku's village, accompanied by Maqbul Aziz, Sub Inspector of police a head constable, and two constables and one Excise peon When they reached the village they picked up two witnesses, Bhawani, who is the mukhia of the village, and Lalla Baoia The party proceeded to Maiku s house where they found Maiku's wife She said that Maiku had gone to Unao The search took place in her presence, and one full bottle of country liquor and one bottle half full was found There was also a basket of *mahua* flowers a still, a still head and pipe The pipe was concealed in the roof The other things were in a room which was fastened with a chain The two bottles were in a box which was locked The key was obtained from Maiku's wife. The still itself was built of pakka bricks The Excise Inspector, the Sub Inspector, and the witness Bhawani, who is the headman of the village, were examined The other witness, Lalla Bama, was not produced by the prosecution

The learned Magistrate acquitted the accused largely because the other witness, Lalla Baoia, was not produced by the prosecution Held —"We desire to call the attention of the Magistrate and, through him, of all Magistrates, to the exact wording of section 252 (2) of Criminal Procedure Code This was a warrant case"

"The Magistrate shall ascertain from the complaint *or otherwise* the names of any persons likely to be acquainted with the facts of the case, and

to be able to give evidence for the prosecution, and shall summon to give evidence before himself such of them as he thinks necessary."

The duty of seeing that all the evidence essential to the prosecution case, is before the Court is thrown by the Code upon the Magistrate himself It is not open to a Magistrate to acquit on the ground that the prosecution has failed to produce a necessary witness We have not thought it necessary to send for Lalla Bania We see no reason to suppose that the Excise Inspector, the Sub Inspector, and the headman of the village have concocted an entirely false case against Maiku, and that is what the defence amounts to The discrepancies pointed out by the learned Magistrate in his judgment do not appear to us to be of any importance On such points as what clothes Maiku s wife was wearing and whether her baby was directing his efforts to the left breast or the right one, a truthful witness may fail to remember

We accept the appeal, set aside the acquittal and convict Maiku under section 60(*a*) and section 60(*f*) Under section 60(*a*) we sentence him to a fine of Rs 10 In default he will suffer one month s rigorous imprisonment Under section 60(*f*) we sentence him to two months' rigorous imprisonment If the fine is not paid, the sentences of imprisonment will be consecutive

K E Vs Maiku Lal (Oudh) Cr App No 200 of 1925

Exclusive possession of Excisable article—what amounts to—Duty of Excise Officers in charges under S 60 (f)—S 60 (a) (f) —

Government appeal on behalf of the Local Government against the order of acquittal passed by the Magistrate 1st class, of Azamgarh, dated the 1st of November 1924

By the Court

We have come to conclusion that this appeal must succeed The charge was of being in possession under section 60 (*a*) of an excisable article and under section 60 (*f*) of implements for its manufacture We are of opinion that the charge under section 60 (*f*) is not sustainable One may probably not be far wrong in inferring that the pipe which smelt of spirit and one end of which fitted the hole in the pot was used as a sort of strainer It would appear that the liquor was poured into the tin and kept there for sale or for storing purposes If Inspectors of the department rely upon a charge under section 60 (*f*) relating to implements they must explain to the court what the implement is and for what purpose they suppose it is in the possession of the accused They are experts in these matters and Magistrates and other tribunals are not supposed to be familiar with implements of distillation and require to be instructed in matters which are unconnected with their own work Therefore that part of the charge must be dismissed But the liquor

was undoubtedly excisable liquor and nobody knew it better than Mahadeo and Baldeo, because they had originally sold under a licence from Government, which appears to be from what Mahadeo has told us, a very profitable business The position is this The Inspectors made a sudden raid in this village and went quite early on a September morning to the premises of the accused, and searched their house Having successfully searched the house they found a room adjoining Now if that room had been cut off from the residence and could be truly described as quite separate and at a distance from the house, it might have raised an element of doubt in the case But the room is really a part of the structure and connects with the house by a door The door was locked The key was in the possession of Baldeo accused To hold that the owner of the house who was in possession of the key, did not know what was inside the room, in the absence of very strong evidence to the contrary, appears to us strange At any rate on production of the key this liquor and strainer were found inside The Magistrate was wrong in holding that these were not in possession of the accused They were and that threw upon them the onus by section 71 of the Excise Act of accounting satisfactorily for such possession There is really no accounting There is a vague suggestion of planting by a rival in trade We therefore allow the appeal, convict both Mahadeo and Baldeo of possessing excisable articles under section 60 (*a*) of the Excise Act and fine each of them the sum of Rs 50 in default of payment suffer three weeks simple imprisonment

K E Vs Mahadeo & another 88 I C 275=26 Cr L J 1107.

Finding of Bhang in a house occupied by several persons—Liability of owner—S 60 (a) —

The accused was convicted by the First Class Magistrate of Gonda under S 60 (a) U P Excise Act 1910 and sentenced to pay a fine of Rs 15 or in default to suffer a weeks R I The Charge against him was that while a search was made in his house *bhang* weighing about 9 *chhataks* was found in a *handi* (earthen pot) in his house The Sessions Judge confirmed the conviction on appeal In revision before the Judicial Commissioner, it was urged that it was established beyond doubt that in the house in which the *bhang* was found and in which the applicant lived there were several other persons who also lived there There were 3 of his sons, one of them aged about 25, the second aged about 20, and the third aged about 15, who together with his nephew aged about 25, all lived in the same house Held, "*In re-Muhammad Ali Shet*—4 I C 163, it was held by Kanhaiya Lal, J. C, that where stolen property was found in a house occupied by several persons it was not enough to show that the property was found in the house, to convict a member of the family who might have had nothing to do with bringing or keeping it there In the latter case (Basbir Ahmed Khan *Vs* Emp 54

I.C. 248 and Emp. *Vs.* Farrukh Hussein 67 I C. 588) the same principle was upheld by Lindsay J C. A father and son lived in the same house. The son was *challaned* under S. 411 I. P. C. after the father had been convicted under the same section. The only evidence against the son was that stolen property had been found in the house. It was held that there was nothing to show that the accused was in possession of the property which he knew or had reason to believe to be stolen. In the case before me there is no evidence to show that the applicant brought the *bhang* and kept it in the *handi* which was found in the house. It might be that the other inmates of the house were responsible for this act. Under these circumstances the applicant cannot be convicted of the offence with which he has been charged. The learned Sessions Judge remarks in his judgment that the applicant was present in his Court and had red eyes of an habitual smoker of *bhang*. I am surprised to find such a statement in the judgment of the learned Judge. The redness in the eyes of the applicant, if any, may have been due to several causes and in the absence of evidence I am not prepared to hold that the applicant merely on that account, is an habitual smoker of *bhang*." Conviction set aside.

Bahadur Dube Vs. *Emp.—26 Cr. L J. 1281=89 I.C. 145.*

Sale without license—S. 60(1) —

One Panna Lal who held no license under the Excise Act had received an order from the Secretary of the Jhansi Club for some methylated spirits. He obtained the methylated spirit from another shop and sent it from there on to the club but made no profit from the transaction. Held that under the particular circumstances, it was difficult to call this transaction a sale.

Panna Lal Vs. *Emp 2 I C. 192=31 A 293.*

Sale by licensee's heir after his death—S 60(1) —

A license granted to a person to sell liquor is a personal grant, largely made for personal reasons, and it does not after the death of the licensee, attach itself in any way to his property or devolve upon his heirs. Where the heir of a license-holder sold liquor during the unexpired portion of the period mentioned in the license, held he was properly convicted.

Madho Pershad—22 All. 441.

Selling liquor without license. Merely handing liquor bottles whether amounts to sale—S. 60 (1) —

One Kanhiyalal was the licensee of a certain liquor shop. On a certain evening the Excise officer paid a surprise visit to the shop and found one Shankar Das a servant of Kanhiyalal on the gadi and authorised by the collection to carry on the sales at the shop. The Accused Jankai Das was handing

liquor to Shankar Das on the gadi On these facts Janaki Das was convicted of an offence under S 60 of selling liquor without a license

Held on revision that it was impossible to hold that Janaki Das committed any offence whatsoever If this man is guilty of an offence, then every person who performs any duty in that shop except the actual handing over of the liquor to the public commits an offence every time he assists in the bottling of the liquor or the cleaning of the utensils or in any other way assisting in the shop The sale in the present has been conducted by Shankar Das, and the mere handing up of a bottle of liquor by an assistant to Shankar Das is not covered by the rule Conviction set aside.

Janaki Das Vs Emp (All) 39 IC 336

S 60 (a) Release on probation of good conduct under S 562 Cr P C —

The facts of the case under reference were that Kishen Chand was convicted under section 60 (a) of Act IV of 1910 and released under section 562 of the Criminal Procedure Code on furnishing a personal bond of Rs 300, with two sureties for a like amount for one year

The District Magistrate in his reference pointed out that the offence of dealing in cocaine was principally prevalent at S which town, regularly derived supplies from Delhi, and it was essential that all offences in cocaine should be severely punished

Their Lordships the chief justice and Mr Justice Mukerji absolutely disagreed with the Magistrate s decision and observed that he was overborne and gave undue weight to the pleading of counsel on behalf of the accused, and further attached undue weight to the social position of the man before him The real truth about the matter was that the Magistrate never exercised any judicial discretion and he allowed his feelings to run away with him Their Lordships set aside the decision of the Magistrate and in the interest of justice and in the interest of the young man convicted and sentenced him to six months rigorous imprisonment, commencing from the date of his arrest, "This will give him" Their Lordships remarked, "an opportunity of breaking a habit which otherwise will certainly destroy him"

(All) High Court Extract from Pioneer dated 26—4—25

Police Sub Inspector making a false charge against liquor seller for failing to sell liquor on credit—Right of Sub Inspector to arrest liquor seller under Ss 60, 64 —

On the evening of 24—10—20, the Sub Inspector of Police of Kamalganj in the Farukhabad District sent four constables to the shop of Ramghulam a

liquor seller and demanded two bottles of liquor on credit. Ramghulam refused to supply the liquor because the Sub Inspector owed him the price of ten or twelve bottles previously supplied The constables then used some threats to him and went away saying that they would see him The next morning Ramghulam was arrested and kept in confinement till the afternoon, when he produced some sureties and was released The Sub-Inspector was prosecuted on a charge of wrongful confinement and was sentenced by the District Magistrate to pay a fine of Rs 300 The Sub-Inspector's plea was that a report was made at the station very late on the night that Ramghulam was selling liquor at his shop after hours, he took no action that night but took action the next morning and being of opinion that the report disclosed an offence under S 60 of the U P Excise Act, he arrested Ramghulam in the exercise of the powers conferred upon Police officers under S 50 of the Act The District Magistrate who convicted the Sub Inspector and the Sessions Judge who confirmed the conviction both rejected the defence put forward by the Sub Inspector and held that there was no reliable evidence to show that any report was made at the Police Station on the night of the 24th Oct alleging that Ramghulam was keeping the shop open after hours for the sale of liquor

In revision two points were urged viz, (1) S 42 of the Police Act was a bar to the trial of this case and (2) that the S I had a right to arrest the accused for an offence under S 60 of the Excise Act

Held that S 42 Police Act was no bar to the trial of the Sub Inspector as the complaint was made against him 4 or 5 days after the alleged offence and was therefore within the period of limitation prescribed by that section,

As regards 2, held that that argument can only be put forward if it is assumed that any report concerning the commission of such an offence was brought to the notice of the S I It is a question whether the offence of selling liquor after hours is an offence under S 60 or only under S 64 For an offence under the latter section the Police have no authority to arrest without warrant This point does not arise however, because unless it is established that a report concerning the commission of such an offence was made, no question regarding the Police officers powers to arrest could possibly arise Application dismissed

Shankar Lal Vs Emp (All) 65 I C 433=23 Cr L J 81

Finding of cocaine planted—Search warrant—Legality of search—S 60 —

An Excise Inspector searched the premises of a house and found cocaine planted Held that the conviction of the Accused depended not on the legality of the search but on the fact that the cocaine was found illegally

his possession The absence of a search warrant does not affect the legality of the trial under the Act There is no analogy between the gambling Act and the Excise Act

Syed Ahmed Vs *Emp* —35 *All* 575—22 *I C* 163

Offence not triable summarily —*S* 60 —

Application for revision from a conviction under S 60 of Act IV of 1910 Held The trial was summary contrary to Law because under the Act as modified by Act II of 1923 S 13, the offence with which the applicant was charged was punishable with imprisonment for one year Such an offence cannot be tried summarily under S 260 Cr P C and when a Magistrate tries an offence summarily not being empowered by law to do so, the proceedings are void under S 530 Conviction set aside

Bhikha Vs *Emp* —86 *I C* 432=26 *Cr L J* 800

Penal Code 323 332 *Assaulting Excise officers*—*Right of private defence*—*S* 60 —

M and A were convicted by a Magistrate on the charge of having caused hurt to an Excise Inspector and certain constables in the discharge of their duties as public servants and sentenced to imprisonment and fine under S 332 I P C They set up the plea of the right of private defence but the Magistrate excluded that plea

Held, on revision that this finding implies that the Excise Inspector and the constables were resisted at a time when they, being public servants were acting in good faith under color of their office This is not the same thing as a finding that they were acting in the discharge of their duties as public servants I do not find myself able to arrive at the conclusion that the Excise Inspector and the constables were acting in the discharge of their duties as public servants Mr D who was engaged in searching the house of M, on suspicion that he might find there cocaine committed a number of irregularities in conducting the search He had no warrant authorising him to make this search he brought with him only one search witness (S 103 Cr P C), and nothing in Ss 102/48 of the same code justified him in directing a constable to scale the outer wall and effect a burglarious entry into the house

Conviction altered to one under S 323 I P C and punishment to the period of imprisonment already undergone

Q E Vs *Dalip* 18 *All* 246 *followed*

Mukhtar Ahmad and another Vs *Emp* —
37 *All* 353=16 *Cr L J* 495=29 *I C* 385

Joint trial of several accused Cr P C 235 —

Two Inspectors in the Excise Department received information that illicit liquor was being distilled in a village few miles from Gorakpur They proceeded to the village with 4 Excise peons and made a seizure of articles

which were being used for the purpose of illicit distillation They discovered 6 bottles of illicit liquor They also apprehended 3 villagers The party were on the point of leaving the village between 6 & 7 P M when a fire broke out in the cattle shed of one of the persons arrested, the object of the fire being that the Excise officers might be charged with having committed mischief by fire The villagers numbering over 200 collected and beat the Excise officers severely and maltreated them The articles seized were destroyed, the prisoners were rescued and the Excise Inspectors were wrongfully confined. The period from the first event to the last was less than 5 hours

35 persons were committed for trial on charges under 395 and 332 I P C The Sessions Judge amplified these charges and framed charges against all under Ss 333 332, a charge under 225 I P C against all but three of having rescued those three persons, a charge under 224 I P C against the said three for having escaped from lawful custody, a charge under S 342 against 18 for having illegally confined the Excise Inspectors, and against the Zamindar under 342/149 I P C for being responsible for the said illegal confinement. Against 4 of the Accused there was a further charge under 436, 193 of having set fire to the cow shed with the intention of fabricating false evidence against the Excise Inspectors and their party He convicted 28 of the Accused to various terms of Imprisonment It was urged in appeal that their joint trial was bad in law

Held that all these events formed one transaction within the meaning of S 235 Cr P. C and that in these circumstances their joint trial was good

If in a joint trial of several persons the Accused are likely to be bewildered in their defence by having to meet many disconnected charges, or the prospect of a fair trial is likely to be endangered by the production of a mass of evidence directed to many different matters and tending by its mere accumulation to induce an undue suspicion against the Accused, then the propriety of combining the charges may well be questioned

There is nothing in the words of S 235 or S 239 Cr P C to support the limitation that in no circumstances can more than three offences be combined even if more than three offences have been committed in the same transaction

The real and substantive test for determining whether several offences are connected together so as to form the same transaction depends upon whether they are so related to one another in point of purpose or as cause and effect, or as Principal and subsidiary acts, as to constitute one continuous action. A mere interval of time between the commission of one offence and another does not by itself necessarily import want of continuity tho' the

length of the interval may be an important element in determining the question of connection between the two

Sanuman and others Vs *Emp* (*III*) *63 I C 401.*

60A Any owner, occupier, or person having the use of any place who uses such place for the commission or for abetting the commission of an offence under this Act in respect of cocaine, or knowing or having reason to believe that such place is being used for the aforesaid purpose permits it to be so used, shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both

Penalty for use of place for commission of an offence respecting cocaine

Sending Cocain by Post—69 (A) Excise Act and 61 read with S 70 of the Post Office Act —

One Ismail Khan was convicted under S 60A of the Excise Act and under S 61 read with S 70 of the Post Office Act for sending cocaine by Post He was fined Rs 200 on the first charge and 100 Rs on the second The Sessions Judge on appeal confirmed the convictions but referred the matter to the High Court for enhancement of sentence

Held In our opinion the Court below was justified in finding that the Accused had been guilty of an offence under S 60 (A) of the Excise Act and that he was rightly convicted So far as the conviction under S 61 read with S 70 of the Post Office Act is concerned we think that the conviction was not justified by Law S 70 of the Post Office Act VI of 1893 provides that any person who abets the commission of any offence punishable under the Act or attempts to commit any offence so punishable, shall be punishable with the punishment provided for that offence' We have now to see what offence Ismail Khan is alleged to have abetted S 61 is the only section referred to That section provides that "whoever in contravention of the provisions of S 19 or S 20 sends or tenders or makes over in order to be sent by Post any postal article or anything shall be punishable We have now to see whether any person in contravention of the provisions of S 19 or S 20 sent any article by Post S 19 is as follows —" Except as otherwise provided by rule and subject to such conditions as may be prescribed thereby, no person shall send by Post any explosive, dangerous filthy, noxious, or deleterious substance any sharp instrument not properly protected, or any living creature which is either noxious or likely to injure postal articles in course of transmission by post or any officer of the Post Office ' Clause (2) says " No person shall send by post any article or thing which is likely to injure postal articles in course of transmission by post or any officer of the Post office

It is quite clear that the provisions of S 20 have no bearing on the case It seems to us that the provisions of S 19 really deal with the sending of articles or animals by post which will be likely to injure any person occupied in the execution of Post Office work or which might be likely to cause injury to articles in the course of transmission through the Post It does not seem to aim at the restriction of any trade It is very hard to say that cocaine could be considered to be an "explosive" or a dangerous, filthy, "noxious" or "deleterious" substance, within the meaning of the section No doubt the abuse of cocaine may be followed by very serious consequences but this, it seems to us, is not what the section was intended to provided against It is said that rules have been made to prevent the sending of these articles by post. The sending of articles by post in contravention of the rules so made does not seem to be an offence under S 61, which only deals with the sending of articles in contravention of S 19 and S 20 We think therefore that the accused was wrongly convicted of an offence under the Post Office Act We think however that the sentence under S 60A Excise Act was inadequate" We set aside the conviction under S 70 read with S 61 Post Office Act and acquit the accused of that offence We enhance the sentence under S 60A Excise Act to a sentence of 3 M S I in addition to the fine of Rs 200

Ismail Khan Vs *Emp 13 A L J 356 (1915).*

Illicit possession of cocaine—S 60A —

An Excise Inspector and witnesses raided a certain house and searched it on suspicion that illicit cocaine would be found there The result of the search was the discovery of a small phial containing adultrated cocaine and the prosecution of four persons as owners or occupiers of the house for an offence against the Excise laws *i e*, S 60A The defence was that the phial in question was planted on the accused persons *i e*, that some member of the raiding party brought it with him in order to make certain in any event, of a conviction The Magistrate convicted all the four persons The Sessions Judge in appeal declined to draw any inference of guilty knowledge or complicity against 3 out of the 4 accused persons and acquitted them The remaining accused Durga preferred a revision to the High Court

Held "It follows that an offence against the Excise Laws was being committed by some person or other in respect of this phial of cocaine in the house in question The provisions of the section in question are no doubt of an exceptionally stringent nature but they are intended to be so in order to enable the Excise authorities to deal effectively with the illicit traffic in cocaine As the section stands, the owner or occupier of a house who knowingly keeps an illicit supply of cocaine on the premises renders himself liable to punishment under this section, and no burden is on the prosecution of proving that the said illicit supply had been kept

r any length of time, or that the premises had been used for this purpose on revious occasions No doubt, the facts of each particular case require to be arefully scrutinised before provisions of this kind are applied, more particularly so in the case of an owner who does not occupy or personally reside in he place in respect of which the offence is alleged to have been committed. 'he mere discovery of a phial of illicit cocaine on certain premises affords nly a slender basis for the inference that the owner of such premises, not imself residing there, knew or had reason to believe that the resident or esidents of the house were breaking the law in this matter. The question in his particular case is whether guilty knowledge on the part of all the four ersons found on the premises at the time of the raid could not be inferred, s the trying magistrate inferred it from their conduct at the time of the aid and from the general circumstances of the case The learned Sessions udge declined to draw any inference of such guilty knowledge or complicity gainst 3 out of the four accused The question is whether the remaining ccused, Durga, has or has not been rightly convicted on the evidence of aving been found to be personally in possession of this phial of cocaine The facts are that he was asked in the course of the search to open out, in he presence of the Police Officer, a certain roll of bedding which was found n a verandah room where the said accused had been sitting, in the company of a woman, at the moment when the Police raided the houses Durga's case is that he came upon this phial of cocaine somewhere in that roll of bedding, and his defence was that it had been planted there by some member of the search party The evidence as to what precisely took place at the moment when Durga either found or professed to hod, the phial in the bedding is, as might be expected, somewhat conflicting The opinion, I have myself formed on a review of the entire evidence is that Durga might well have been convicted on the charge as framed by the Magistrate, and that in any case, it seems a fair matter of inference from the evidence that he was at least in joint possession, if not in sole possession of this phial of cocaine. If the case were before me in appeal, I should feel disposed to record a conviction in the alternative, of illicit possession or of abetment of the offence of illicit possession " Application dismissed.

Durga Vs Emp. (All) 18 A L J 348=58 I C 246

Joint possession of cocaine by two brothers—Whether possible—U P Excise Act S 60A —

The two applicants who were brothers were convicted under S 60(a) and sentenced to one year's R I and a fine of Rs 50 for joint possession of cocaine. The question in revision was whether the finding that both the applicants were in possession of the cocaine was justifiable in law Held "The cocaine was found in certain pots containing grain in a Bania's shop.

It is proved that both the applicants who are brothers, were serving habitually, in the shop and the Magistrate concludes from this that they must have been daily handling the pots in question and that, therefore, the finding that both of them must have been aware of the existence of the cocaine there is justifiable. Every one of these cases must depend upon its own facts Here it seems to me an obvious argument, in support of the finding of the Magistrate that both of these men had guilty knowledge, that if either of them was keeping the cocaine secretly intending to conceal and concealing the fact from his brother, it is inconceivable that he would keep it in a place in which sooner or later and most probably sooner his brother would be certain to find it I think therefore the conclusion that both the men knew of the presence of cocaine there is justifiable Under the Amending Act IV of 1919, the maximum sentence of imprisonment is one year It does not seem to me that it is necessary to give that maximum in the case of the first offence. I reduce the sentence to 6 six months "

Khushi Ram Vs *Emp* 67 I C 338
Alia Vs. *Emp* 77 I.C 447 } *Distinguished*

Ganeshi and another Vs *Emp* 83 I C 892=26 Cr L J 188

Security for abstaining from cocaine offences

60B. (1) Whenever any person is convicted of any offence under this Act in respect of cocaine before a High Court, a court of session, or the court of a district magistrate, a sub-divisional magistrate, or a magistrate of the first class, and such court is of opinion that it is necessary to require such person to execute a bond for abstaining from offences under this Act in respect of cocaine, such court may, at the time of passing sentence on such person, order him to execute a bond for a sum which having regard to his means shall not be excessive, with or without sureties, for abstaining from such offences during such period, not exceeding three years, as it thinks fit to fix

(2) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(3) An order under this section may also be made by an appellate court when disposing of an appeal or by the High Court when exercising its powers of revision

(4) The proceedings subsequent to the making of any order under this section shall be regulated as nearly as may be by the provisions of sections 120, 122, 123, 124, 125 and 126 of the Code

Criminal Procedure, 1908, as if such order had been made under section 106 of the said Code, and the provisions of sections 513, 514 and 515 of the said Code shall apply where a bond is executed or required to be executed under this section

Penalty for unlawfully selling to persons under sixteen, or employing children or women

61. If any licensed vendor, or any person in his employ and acting on his behalf—

(*a*) in contravention of section 22 sells or delivers any liquor or intoxicating drug to any person apparently under the age of eighteen years; or

(*b*) in contravention of section 23 employs or permits to be employed on any part of his licensed premises referred to in that section, any person under the age of 18 years or woman;

he shall be punished with a fine which may extend to five hundred rupees

Selling liquor to a boy aged 10 years after 9 P M —Offence—Ss 61, 64 —

The Accused was a person licensed to sell European liquors in Meerut City. His license did not permit him to sell liquor after 9 P M. A Preventive Inspector of Excise coming along at a time which he thought was 5 mts past 9 P M, saw that A s shop was open In order to find out if liquor was sold after 9 P M, he took a boy aged 10 who was playing near by, gave him money to buy some liquor, and over and above two pice for his trouble for so doing The officer left a Chaprasi to watch the boy. As the boy came out, the Chaprasi seized him, a bottle of liquor was in the boy's hands, and on these facts the Accused was convicted of an offence under S 61 for selling spirits to a person under 16, and under S 64 for keeping his shop open after 9 P M In appeal he was acquitted of an offence under S 64. He went up in revision to the High Court against his conviction under S 61.

Held by the High Court that the vendor was guilty of an offence under S. 61 "At the same time I am surprised to find a Preventive Inspector acting as this man did. His zeal certainly outran his discretion and instead of preventing offences he was inciting offences No offence would have been committed that night had he not been the person who instigated and really abetted the commission of the offence The evidence shows that he was anxious, if the word may be used, for an offence to be committed The hunting this shop down on the ground that it was open 5 minutes after time and that a very doubtful 5 minutes, his picking up the lad and sending him in to buy liquor are acts to be strongly deprecated To send a person to spy out

whether a crime is being committed and to come back with information that it is being committed is one thing, but to engineer an offence in order to find out whether a person when tempted will commit the offence is quite a different thing As I said before, but for the act of the Preventive officer this offence might not have been committed that night ' Fine reduced from 50 Rs to 15 Rs

Bhim Sen Vs Emp—(All) 17 Cr L J 139=33 I C 315

Penalty for attempting to render denatured spirit fit for human consumption

62. [1][Whoever renders or attempts to render fit for human consumption any spirit (whether manufactured in British India or not) which has been denatured, or has in his possession any denatured spirit which has been rendered fit for human consumption or in respect of which any attempt has been made to render it so fit shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both]

Penalty for possession of excisable article unlawfully imported &c

63 Whoever, with lawful authority, has in his possession any quantity of any excisable article knowing the same to have been unlawfully imported, transported or manufactured or knowing the prescribed duty not to have been paid thereon, shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both

Penalty for certain acts by licensee or his servant

64 Whoever, being the holder of a license, permit or pass granted under this Act, or being in the employ of such holder and acting on his behalf,—

(*a*) fails to produce such licence, permit or pass on the demand of any excise officer or of any other officer duly empowered to make such demand or

(*b*) in any case not provided for in section 60 wilfully contravenes any rule made under section 40, or

(*c*) wilfully does or omits to do anything in breach of any of the conditions of the licence, permit or pass not otherwise provided for in this Act,

shall be punished for each such offence with fine which may extend to two hundred rupees

1 This section was substituted for the original section 62 by U P Act I of 1915, s. 7.

Servant appointed to watch the grove selling toddy after prescribed hours—Liability of Master—Ss 64 71 —

Azimuddin, a license holder was convicted under Ss 64 read with 71 because his servant was found selling toddy after prescribed hours, not at the shop of Azimuddin but in a palm grove The object of the servant being allowed to stay in the grove was to watch the trees and the juice, and not to sell toddy Held that if the servant took it into his head to keep some toddy for himself and to sell it after the prescribed hours no amount of precaution on the part of the master could prevent this The object of the enactment in S 71 seems to have been this Where, however innocently, the holder of a license puts his servant in a position in which he would have an opportunity of contravening the law the master is as much guilty as the servant In this particular case, it has not been stated what were the precautions which the Master Azimuddin could have or should have taken in order to prevent his servant from selling toddy at his own hut Conviction and sentence set aside

Azimuddin Vs Emp—(All) 26 Cr L J 832=86 I C 480

Maintenance of correct account by servant of Licensee—Provisions of opium Act—S 64 (c) —

The 3 Accused were convicted under S 64 of the U P Excise Act The first two accused are the holders of a license for the sale of liquor. The third Accused Kallu is their Salesman One of the conditions of the license was that an account of sales made should be kept in a prescribed form The charge against the Accused was that they had not kept correct accounts and thus they had committed a breach of condition 9 of the license Held on reference that S 64 provides that whoever wilfully does or omits to do shall be punished with fine The use of the word 'wilfully clearly shows that it must be shown that they themselves allowed the breach to be committed by their servant or were cognisant of what their servant was doing The case of Babu Lal *Vs* Emp 14 I C 666 is one under the Opium Act, the provisions of which are different The use of the word "wilfully clearly shows that in the case of the Accused it must be proved that they had intention or knowledge Convictions of all three set aside

Ram Das and others Vs Emp—46 I C 302

Adulteration of liquor Breach of conditions of the licensee—S 64—Liability of licensee —

We must allow this appeal by the Local Government against the order of acquittal passed by the Sessions Judge of Sahranpur on the ground that the provisions of Section 71 of the Excise Act have been entirely ignored The charge was one of adulteration under Section 64 for having committed a breach of one of the conditions of the licence, namely the condition that

probibits the sale of adulterated liquor The charge was established by showing that the son had done it, and that the licensee was absent at the time. But the Magistrate convicted on the ground that the father was aware of the conduct of his son The learned Sessions Judge has acquitted the licensee, following the decision in the case of Ram Das *Vs* Emp XVI Allahabad Law Journal, page 474=46 I C 302 on the word "wilfully" used in Section 64 That case contains no reference to Section 71, and Section 71 places the burden upon the licence holder, for any offence wilfully committed by any person in his employ and acting on his behalf of establishing that he took all due and reasonable precaution to prevent the commission of the offence Unless be establishes that, he is liable to conviction as though he had done it himself No attempt of that kind was made by the defence, and therefore the ground upon which the learned Judge has allowed the appeal is not established and the appeal must be allowed and the order of the Magistrate restored

There was a further charge with regard to selling in breach of his licence by charging an excessive price We think the Magistrate was right about this The learned Judge does not appear to have said much about this For the reasons given in the case King Emperor *Vs* Kishen Chand and another, we think that the Magistrate was right in this case also But in restoring his order we reduce the penalty for selling at an excessive price We fine him Re 1 and reduce the fine for breach of rule 6 to Rs 149, the result being that he will pay Rs 150 in all

K E Vs Sital Prasad—(All) Cr App 930 of 1924

Supplying of liquor short in measure—Breach of licence—Liability of Licensees—S 64 (c) —

In this case the Government appeals from an order of acquittal made by the Sessions Judge of Saharanpur in an appeal to him from the judgment of a First Class Magistrate. The charge was one framed under section 64, sub-section (c) for wilfully doing something in breach of a license granted by the Excise authorities The two persons charged, were carrying on a shop in partnership in Lohani Sarai, Sabaranpur, under a licence granted by the Excise authorities Such licence prescribes the price at which liquor may be sold by a licensee So far as it is material for this case, the prescribed consideration was three annas per chatak A deputy collector sent on four different occasions two men, that is to say the two men were distributed over the four occasions, who may be presumed to have been illiterate One was a Gurkha, a servant of the Deputy Sahib, and one was a mere sweeper at th Dak bungalow They were commissioned to go to the shop and buy liqu corresponding to a specified sum of money. There can be very little do that the deputy collector was laying a trap for the licensees, and tha

adopted this method in order to catch them unawares, because it is not improbable that if they, for example, had ordered 6 chataks they would not have been asked to pay more than eighteen annas That is to say, if the vendor had supplied them with the correct quantity, he would not probably have dared to charge more than three annas per chatak But we are entitled to take judicial notice of the fact that that is not the regular and probably not the most frequent method which poor and illiterate people adopt for ordering goods They come to buy so much worth of stuff and, contrary to the Western practice, Eastern prices are regulated by the quantity sold per rupee and not by the money value of specified quantity The sums which were entrusted to the servants to invest upon liquor differed on each occasion, and were carefully selected so as to provide a multiple or three For example one was Rs 1-2 which would produce six chataks, one was 0 12 which would produce 4 chataks and another was Rs 1 8 which would produce 8 chataks On each occasion the full amount of the money was taken by the vendor, but a less quantity than the right quantity was delivered This was exactly what was expected by the Excise authorities, and by a simple sum of arithmetic, they maintain that the vendor in breach of his licence was selling at a price in excess of three annas per chatak that is to say he was charging Re 0 3¾ roughly on three of the amounts, and four annas on another The Magistrate came to the conclusion that this was the correct view, and that the persons who actually sold the liquor in the shop did in fact take advantage of the form in which the goods were ordered, to charge what works out at an increased price The importance of this is that we cannot shut our eyes to the fact that many transactions, to say the least of it, would take place by poor people in this form Persons who are unable to protect themselves certainly unable to read, have a very vague idea, even if they are being cheated, as to what the precise form of complaint is, which it is open to them to make and, as the Magistrate rightly says, "one noticeable point about the case is that, the liquor was purchased on four occasions, and on all those occasions, it was short to some extent and by a certain proportion This shows that it was not accidental, but that the licensees habitually do it or allow it" We think that finding is correct It derives support from the fact that the licensees professed total ignorance of these particular transactions Whether the same, man sold all the stuff or whether the two licensees themselves were both engaged in selling the four between them, or whether they had on other persons in the shop whom they allowed to sell, the evidence is overwhelming that this was a systematic practice which was going on by which, under the guise of giving short quantity, the public were being robbed But if the thing which was done, was in fact a breach of the licence, the licensees cannot escape from the penalty for committing a breach of their licence by saying

that they ought to have gone to jail because they have also committed fraud upon individuals The learned Sessions Judge has taken, what at first sight would appear to be an absolutely correct view and what certainly is a plausible view. He says, it amounts to cheating, as it undoubtedly does If the customer had ordered 6 chataks, the vendor could have been prosecuted for cheating straightaway upon that transaction He is also correct in saying that, a licence does not contain a condition against cheating, and, therefore, cheating as such, is not necessarily a breach of the licence, and he goes on to say, that, owing to the serious nature of such an offence upon poor purchasers, a punishment of mere fine is quite inadequate, imprisonment ought to follow, and that it ought to have struck the learned Magistrate that he was misapplying the law, and that the matter was not covered by the section. The difficulty of deciding this case is that, we agree very largely with what the Judge has said Where it seems to us that he falls short is this He has overlooked the fact of the particular form which was intentionally adopted for making the purchase in this case, and he has also overlooked this further difficulty, that, inasmuch as the deputy collector was deliberately laying a trap under the Excise Act, and not trying to catch the vendors for cheating, no instructions were given to these humble individuals, whom he sent to carry out his orders in making the purchase, to identify the man who sold to them, and if it should happen—we do not know in an isolated case, or series of isolated cases, that the man who actually carried out the sale, was some wretched individual employed for the purpose by the licensees, whose acts the licensees could repudiate, it might be difficult, if not impossible, to stop the system by prosecution for cheating because the licensees would always be able to say, 'I am not criminally liable for the criminal acts of my servant It is true that he was playing a dishonest trick upon my customers and I am glad that it has been discovered because my customers may desert me if it is not stopped The money, which he earned by this dishonest trick played upon the customer must have gone into his pocket as it has not reached me, and I know nothing about it' It is a well known fact that, there are great difficulties in bringing home cases of cheating of this kind to the real principal But the view in England has always been in these cases, and it is also in the Act, that for breach of a licence, the licensee who leaves a man in possession to carry on the business under the licence, is responsible just as if he did it himself The provision in this statute, is contained in section 71, and the finding of the Magistrate in this case that it was going on systematically with the knowledge of the licensees, makes it quite clear that they were in fact selling at a price which they knew to be in excess of the price provided by the licence On a careful examination, although Mr Alston was perfectly right on behalf of the respondents, in pointing out that, in a question of contract like this, which may give rise to nice technical questions of law, the

witnesses might have been examined better in court, and one would have liked to know in court, what they did in fact say in the absence of the other side saying anything to the contrary—we are bound to accept the view that they did ask for liquor for Rs. 1-2, for Rs. 1-8, and for 0-12 in each case, and did so with great care. Under the circumstances, we must allow the appeal and restore the order of the Magistrate.

K. E. Vs. Kishen Chand and Dhum Singh (All.) Cr. App. 929 of 1924.

By Mr. Justice Sulaiman :—

Undoubtedly there is a clear distinction between selling liquor at a price higher than at the authorised rate and supplying liquor short in weight. In this case, the fixed rate was 3 annas per chatak. If a purchaser were to go to a shop and ask for 6 chataks of liquor, and the salesman were to supply him 6 chataks but charge more than Rs 1-2-0, that would obviously be a case of selling at a higher price On the other hand, if a purchaser asks for 6 chataks of liquor and the salesman professes to sell him 6 chataks and charges only 1-2-0 but in fact supplies him less in quantity, it would not be a case of selling liquor at a higher price, but supplying liquor short in measue.

U. P. Excise Act (IV of 1910), S. 64 (c).—Sale by one partner out of prescribed hours.—Other partner, liability of.

For purposes of agency two partners stand to one another in the same relation as master and servant.

Where, therefore, one of the partners in a liquor shop commits a wilful breach of the licence and sells liquor after prescribed hours, he does so as agent for the other partner who is therefore equally liable.

Queen Empress v. Tyab Ali, 24, B. 423; Bom. L. R. 52; 12 Ind. Dec. (N. S.) 815, Babu Lal v. Emperor, 14 Ind. Cas. 666; 34 A. 319 A. L. J. 288; 13 Cr. L. J. 282, referred to.

K. E. Vs. Jwala Prasad—(All.) 82 I. C. 139.

Penalty for consumption in chemist's shop, &c

65. (1) If any chemist, druggist, apothecary or keeper of a dispensary allows any excisable article which has not been *bona fide* medicated for medicinal purposes to be consumed on his business premises by any person not employed in his business, he shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees, or with both.

(2) If any person not employed as aforesaid consumes any such excisable article on such premises, he shall be punished with fine which may extend to two hundred rupees.

66. Any excise officer who without lawful excuse shall cease or refuse to perform, or shall withdraw himself from the duties of his office, unless expressly allowed to do so in writing by the Excise Commissioner, or unless he shall have given to his superior officer two months' notice in writing of his intention to do so, shall be punished with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Penalty for excise officer refusing to do duty.

67. If any excise officer—

Penalty for excise officer making vexatious search, &c.

(*a*) without reasonable grounds of suspicion enters, inspects or searches, or causes to be entered, inspected or searched, any place; or

(*b*) vexatiously and unnecessarily seizes any property of any person on the pretence of seizing or searching for any article liable to confiscation under this Act; or

(*c*) vexatiously and unnecessarily detains, searches or arrests any person;

he shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

68. Whoever is guilty of any act or intentional omission in contravention of any of the provisions of this Act, or of any rule or order made under this Act, and not otherwise provided for in this Act, shall be punished for each such act or omission with fine which may extend to two hundred rupees.

Penalty for offences not otherwise provided for.

69. If any person, after having been previously convicted of an offence punishable under section 60, section 60A, section 62, section 63 or section 65 or under the similar provisions in any enactment repealed by this Act, subsequently commits and is convicted of an offence punishable under any of those sections, he shall be liable to twice the punishment which might be imposed on a first conviction under this Act:

Enhanced punishment after previous conviction.

Provided that nothing in this section shall prevent any offence which might otherwise have been tried summarily under Chapter XXII of the Code of Criminal Procedure, 1898, from being so tri

Cognizance of offences.

70 (1) No magistrate shall take cognizance of an offence punishable—

(*a*) under section 60, section 60A, section 63 or section 65, except on his own knowledge or suspicion or on the complaint or report of an excise officer, or

(*b*) under section 62, section 64, section 66, section 67 or section 68, except on the complaint or report of the Collector or an excise officer authorized by him in that behalf

(2) Except with the special sanction of the Local Government, no magistrate shall take cognizance of any offence punishable under this Act, unless the prosecution is instituted within a year after the date on which the offence is alleged to have been committed

Report of Police Officer—Whether amounts to report of Excise Officer under S 10 - Ss 60—70 —

The applicant was convicted under S 60 of the Act of having cultivated hemp plants and also of having sold them He was sentenced to 1 M R I and 100 Rupees fine in default to 1 M R I It was contended in revision that the Court had no jurisdiction to entertain the case on the ground that under S 70, no Magistrate could take cognisance of an offence under S 60 except on his own knowledge or suspicion or on the complaint of an Excise officer This case was started on the report of an Excise Officer The report in question was made by the Police Officer in charge of the Station Held, that under S 3 of the Act, Excise Officer includes any person invested with powers under S 10 of the Act Under notification No 576 of July 13th 1910 all Police Officers in charge of Stations were invested with the powers specified in S 50 of the Act in respect of offences punishable under S 60 clauses (b), (c), (d), (f) and (i) The conviction in this case was under clauses (c) and (d) It is therefore clear that the Police Officer who made the report on which the Magistrate took cognisance of the case was an Excise Officer within the meaning of S 10 Application dismissed

Prag Vs Emp—(A) 16 Cr L J 591=30 I C 143

Presumption as to commission of offence in certain cases.

71 In every prosecution under section 60 it shall be presumed, until the contrary is proved, that the accused person has committed an offence punishable under that section in respect of—

(*a*) any excisable article, or

(*b*) any still, utensil, implement or apparatus whatsoever for the manufacture of any excisable article other than tari, or

(*c*) any materials which have undergone any process towards the manufacture of an excisable article or from which an excisable article has been manufactured,

for the possession of which he is unable to account satisfactorily :

and the holder of a license, permit or pass under this Act shall be liable to punishment, as well as the actual offender, for any offence punishable under section 60, section 62, section 63 or section 64 committed by any person in his employ and acting on his behalf as if he had himself committed the same, unless he shall establish that all due and reasonable precautions were exercised by him to prevent the commission of such offence :

Provided that no person other than the actual offender shall be punished with imprisonment except in default of payment of fine.

Possession of liquor—Nature of presumption—S. 60 (a) 71 —

The Accused was convicted on his own plea of being in possession of illicit liquor and was sentenced under S. 60 (a) to 1½ month's R I. The statement of the Accused was that his son was ill and that he had brought a small quantity of liquor from his brother-in law. The Magistrate was of opinion that under S 71 the presumption was that the Accused had himself manufactured the liquor

Held that no such presumption arises in the case. The only presumption is that the Accused was in possession of an Excisable article. Under the circumstances, the sentence of imprisonment is unduly severe and not called for. Sentence reduced to a fine of Rs. 10 in default to 1 week's R. I.

Sukta Vs. Emp.—46 I. C. 294.

71. (1) Whenever an offence punishable under this Act has been committed—

(*a*) every excisable article in respect of which such offence has been committed,

(*b*) every still, utensil, implement or apparatus and all materials by means of which such offence has been committed,

(*c*) every excisable article lawfully imported, transport manufactured, had in possession or sold along with or in addition any excisable article liable to confiscation under clause (a),

(*d*) every receptacle, package and covering in which a excisable article as aforesaid or any materials, still, utensil, imp ment or apparatus is or are found, together with the other conter (if any) of such receptacle or package, and

(*e*) every animal, cart, vessel or other conveyance used carrying such receptacle or package, shall be liable to confiscatio

(2) When in the trial of any offence punishable under th Act, the magistrate decides that any thing liable to confiscation under sub-section (1) may order confiscation :

When confiscation may be ordered.

Provided that in lieu of ordering confiscation he may give t owner of the thing liable to be confiscated an option to pay such fi as he thinks fit.

73. When anything mentioned in clauses (*a*) and (*b*) of sectio 72, sub-section (1), is found in circumstanc which afford reason for believing that an offen punishable under this Act has been committe in respect or by means thereof, or when such an offence has be committed and the offender is not known or cannot be found, t Collector may order confiscation of such thing and of any oth thing or animal found or used therewith which is liable to confisc tion as provided by section 72, sub-section (1) :

Further provisions for confiscation.

Provided that no such order shall be made until the expiratio of one month from the date of seizing the thing or animal in que tion or without hearing the person (if any) claiming any right theret and the evidence (if any) which he produces in support of his claim

Provided further that if the thing in question is liable to speed and natural decay, or if the Collector is of opinion that the sale the thing or animal in question would be for the benefit of its owne the Collector may at any time direct it to be sold ; and the prov sions of this section shall, so far as may be, apply to the ne proceeds of such sale.

Power of excise officers to compound offences.

74. Any excise officer specially empowered by the Local Government in that behalf may accept from any person whose licence, permit or pass is liable to be cancelled or suspended under clause (*a*) or clause (*b*) of sub-section (1) of section 34, or who is reasonably suspected of having committed an offence punishable under section 64 or section 68, a sum of money not exceeding two hundred rupees in lieu of such cancellation or suspension, or by way of composition for the offence which may have been committed, as the case may be; and in all cases whatsoever in which any property has been seized as liable to confiscation under this Act may release the same on payment of the value thereof as estimated by such officer.

On the payment of such sum of money or such value, or both, as the case may be, to such officer, the accused person, if in custody, shall be discharged, the property seized shall be released, and no further proceedings shall be taken against such person or property.

CHAPTER XI.

MISCELLANEOUS.

Exception of medicated articles.

75. Nothing in the foregoing provisions of this Act applies to the import, manufacture, possession, sale or supply of any bona-fide medicated article for medicinal purposes by medical practitioners, chemists, druggists, apothecaries or keepers of dispensaries, except in so far as the Local Government may by notification so direct.

Power of Local Government to exempt persons and excisable articles from the provisions of this Act.

76. The Local Government may, by notification and subject to such conditions as it may think fit to prescribe, exempt any person or class of persons, or any excisable article, wholly or partly, from the operation of all or any of the provisions of this Act or of all or any of the rules made under this Act, either throughout the United Provinces or in any specified area comprised therein or for any specified period or occasion.

Publication of rules and notifications.

77. All rules made and notifications issued under the Act shall be published in the Gazette, and shall have effect as if enacted in this Act from the

of such publication or from such other date as may be specified in that behalf.

Bar of certain suits

78. (1) No suit shall lie in any civil court against the Secretary of State for India in Council or any officer or person for damages for any act in good faith done, or ordered to be done, in pursuance of this Act or of any other law for the time being in force relating to the excise revenue.

Limitation of suits

(2) No civil court shall try any suit which may lawfully be brought against the Secretary of State for India in Council in respect of anything done, or alleged to have been done, in pursuance of this Act unless the suit is instituted within six months after the date of the act complained of.

Powers of Excise Commissioner exercisable from time to time.

79. Any power conferred by this Act on the Excise Commissioner may be exercised from time to time as occasion requires.

SCHEDULE.

(See Section 2.)

ENACTMENTS REPEALED.

Year.	Number	Short title.	Extent of repeal.
		ACTS OF THE GOVERNOR GENERAL IN COUNCIL.	
1863	XVI	The Excise (Spirits) Act, 1863 ...	The whole so far as it affects the United Provinces.
1894	VIII	The Indian Tariff Act, 1894	Section 6 so far as it affects the United Provinces
1896	XII	The Excise Act, 1896 ..	The whole so far as it affects the United Provinces.
1906	VII	The Excise (Amendment) Act, 1906 ..	The whole so far as it affects the United Provinces

BURMA ACT No. V OF 1917.

PASSED BY THE LIEUTENANT-GOVERNOR OF BURMA IN COUNCIL.

An Act to consolidate and amend the Excise Law in Burma.

THE BURMA EXCISE ACT, 1917.

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Burma Act No. V of 1917.

PASSED BY THE LIEUTENANT-GOVERNOR OF BURMA IN COUNCIL.

(Received the assent of His Honour the Lieutenant Governor of Burma on the 24th March 1917, and of His Excellency the Governor General on the 30th April 1917, and published in the BURMA GAZETTE of the 19th May 1917.)

An Act to consolidate and amend the Excise Law in Burma.

Preamble

WHEREAS it is expedient to consolidate and amend the law in Burma relating to the import, export, transport, manufacture, sale and possession of intoxicating liquor and of intoxicating drugs and the cultivation of the plants from which drugs are prepared, It is hereby enacted as follows :—

CHAPTER I

PRELIMINARY AND DEFINITIONS.

Short title extent and commencement

1. (1) This Act may be called the Burma Excise Act, 1917.

(2) It shall extend to the whole of Burma (*a*); and

(3) It shall come into force on such date (*b*) as the Local Government may, by notification, direct

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,—

(*a*) "Alcoholic liquor" means all liquid containing more than 2 per cent of alcohol by volume, also unfermented *tari* and any

(*a*) [illegible] far as I extend [illegible] local ar [illegible] February [illegible] No. 139, dated 3rd August 1920 [illegible]

(*b*) The Act came into force on 1st October 1917

substance which the Local Government may by notification declare to be alcoholic liquor for the purposes of this Act:

(*b*) "Beer" includes ale, stout, porter and other alcoholic liquors prepared by fermentation and usually made from malt and also such other alcoholic liquors as may be declared by the Local Government to be beer for the purposes of this Act:

(*c*) "To bottle" means to transfer liquor from a cask or other vessel to a bottle, jar, flask, or similar receptacle whether any process of manufacture is employed or not and includes to re-bottle:

(*d*) "Cocaine drug" means the leaves of the coca plant (*Erythroxylum coca*) and cocaine and every other preparation and derivative of the said plant and any other substance which the Local Government may declare to be a cocaine drug:

(*e*) "Denatured" means rendered unfit for human consumption in such manner as may be prescribed by rule made in this behalf under section 65, sub-section (2), clause (*l*):

(*f*) "Excisable article" means any alcoholic liquor or intoxicating drug as defined by or under this Act:

(*g*) "Excise-officer" means any person or officer appointed or invested with powers under this Act:

(*h*) "Excise-revenue" means revenue derived or derivable from any duty, fee, tax, composition, penalty, payment, or confiscation imposed or ordered under the provisions of this Act or of any other law for the time being in force relating to alcoholic liquor or intoxicating drugs; but does not include a fine imposed by a Court of law:

(*i*) "Export" means to take out of Burma:

(*j*) "Hemp drug" includes *charas*, *bhang*, *ganja* and other preparations of the hemp plant (*Cannabis sativa*) as well as all portions of the said plant from which such preparations are made:

(*k*) "Import" means to bring into Burma;

(*l*) "Intoxicating drug" means—

(i) a cocaine drug;

(ii) a hemp drug,

(iii) any other intoxicating drug or substance or any plant which the Local Government may, by notification, specify in this behalf, and

(iv) every preparation or admixture of any drug, substance or plant referred to in clauses (i), (ii) and (iii)

(*m*) "Manufacture" includes—

(i) every process whether natural or artificial, by which any excisable article is produced or prepared (including the tapping of *tari* producing trees and the drawing of *tari* from trees);

(ii) redistillation, and

(iii) every process for the rectification, flavouring, blending or colouring of alcoholic liquor.

(*n*) "Medical practitioner" means—

(i) any person possessed of qualifications which render him eligible for registration under the Medical Act, 1858, and any Act of Parliament amending the same, or under any law for the registration of medical practitioners for the time being in force in any part of British India, or

(ii) any dentist possessed of qualifications which render him eligible for registration as a dentist under the Dentists' Act, 1878, and any Act of Parliament amending the same, or

(iii) any other person engaged in medical or dental practice, licensed as a medical practitioner for the purposes of this Act by the Excise Commissioner.

(*o*) "Place" includes a building, shop, tent, enclosure, booth, vehicle, vessel and raft

(*p*) Expressions referring to "sale" include any transfer otherwise than by way of gift

(*q*) "Spirit" means any alcoholic liquor containing alcohol obtained by distillation

(*r*) "*Toddy*" means the sap or juice whether fermented or unfermented of any kind of palm tree

(*s*) "Transport" means to move between places within Burma

(*t*) "Veterinary practitioner" means a person holding a veterinary diploma or certificate recognised by the Financial Commissioner in this behalf

The Local Government to declare what shall be deemed to be country alcoholic liquor and foreign alcoholic liquor respectively

*3 The Local Government may by notification declare what, for all or any of the purposes of this Act, shall be deemed to be "country alcoholic liquor" and "foreign alcoholic liquor" respectively

Provided that, where the interests of any other Province may be affected, such declaration shall be made subject to the control of the Governor General in Council

Powers conferred by the Act may be exercised wholly or partially

4 All powers conferred by this Act on the Local Government or the Financial Commissioner may be exercised wholly or partially, with respect either to the whole of the province or to any local area, as regards persons generally or any specified class of persons, or any specified individual and as regards excisable articles generally or any specified excisable article or different strengths and qualities of the same excisable article and as regards manufacture generally or any specified method of manufacture and as regards cultivation, possession and sale of any excisable article

Power of Local Government to exempt persons and excisable articles from the provisions of the Act Saving of existing

5 (1) Subject to such conditions as it may prescribe, the Local Government may by notification exempt any person or any excisable article from the provisions of this Act

*The words subject to the control of the Governor-General in Council in this section were deleted and the proviso to this section was added by the Devolution Act 1929 First Schedule Part XI

(2) Save as provided by the Schedule nothing contained in this Act shall affect the provisions of the Sea Customs Act, 1878 or the Cantonments Act, 1910, or the Indian Tariff Act, 1894

CHAPTER II

ESTABLISHMENT AND CONTROL

Local Government's powers of appointment or control

6 The Local Government may by notification—

(*a*) appoint an officer, hereinafter referred to as the Excise Commissioner, who shall, subject to the orders of the Financial Commissioner, have the control of the administration of the Excise Department and of the collection of the excise revenue,

(*b*) appoint any person or officer other than the Collector to exercise all or any of the powers and to perform all or any of the duties of a Collector under this Act, either concurrently with, in subordination to or to the exclusion of the Collector, subject to such control as the Local Government may direct,

(*c*) appoint officers of the Excise Department of such classes and with such designations, powers and duties under this Act as it may think fit,

(*d*) order that all or any of the powers and duties assigned to any officer under clause (*c*) shall be exercised by any Government officer or any person,

(*e*) delegate to the Financial Commissioner, to a Commissioner or to the Excise Commissioner all or any of its powers under this Act,

(*f*) permit the delegation subject to such conditions as it may think fit by the Financial Commissioner, by a Commissioner, by the Excise Commissioner or by a Collector of any powers conferred on him or them by this Act or exercised in respect of excise revenue under any Act for the time being in force,

(*g*) declare in what cases or classes of cases and to what authorities appeals shall lie from orders, whether original or appellate, passed under this Act, and by what authorities such orders may

be revised, and prescribe the time for and manner of presenting, and the procedure for dealing with appeals and revisions.

CHAPTER III

IMPORT, EXPORT AND TRANSPORT

Restrictions on import export or transport

7. No excisable article shall be imported, exported or transported, except—

(a) after payment of any customs or excise duty to which it may be liable, or execution of a bond for such payment, and

(b) on compliance with such conditions as the Local Government may impose

Power to prohibit import export or transport

*8 The Local Government may, by notification, prohibit the transport and the import or export of any excisable article

Provided that, where the interests of any other Province may be affected, no notification prohibiting the import or export of any excisable article shall be issued without the sanction of the Governor-General in Council

Passes to import export or transport

9 No excisable article exceeding such quantity as the Local Government may prescribe by notification shall be imported, exported or transported, except under a pass issued under the provisions of section 10

Provided that in the case of duty-paid foreign alcoholic liquor, such passes shall be dispensed with unless the Local Government shall by notification otherwise direct

Passes granted by Collector

10 Save in respect of such excisable articles as the Excise Commissioner may prescribe by notification passes for the import, export or transport of excisable articles may be granted by the Collector.

*The words "with the sanction of the Governor-General in Council" in this section were deleted and the proviso to this section was added by the Devolution Act 1920 First Schedule, Part VI

CHAPTER IV.

MANUFACTURE, POSSESSION AND SALE.

Hemp cultivation prohibited.

11. No person shall cultivate or collect the hemp plant (*Cannabis sativa*), the coca plant or any plant specified as an intoxicating drug by notification under section 2 (*l*) (*iii*) except under and in accordance with the conditions of a special license granted by the Financial Commissioner.

Unlicensed manufacture etc., prohibited.

12. Except under the authority and subject to the conditions of a license granted under this Act—

(*a*) no excisable article shall be manufactured or collected ;

(*b*) no distillery or brewery shall be constructed or worked ; and

(*c*) no person shall use, keep or have in his possession any materials, or apparatus whatsoever for the purpose of manufacturing any excisable article.

Unlicensed possession or use, etc., of hypodermic syringes prohibited.

13. No person shall make, sell, possess or use—

(*i*) any hypodermic syringe or

(*ii*) any other apparatus suitable for injecting any intoxicating drug except under and in accordance with the conditions of a license granted under this Act :

Provided that this prohibition shall not apply to

(*a*) a medical practitioner,

(*b*) a veterinary practitioner,

(*c*) a person who possesses or uses any such syringe or apparatus on the prescription of a medical practitioner.

Establishment of distilleries, breweries and warehouses.

14. The Excise Commissioner may—

(*a*) establish premises in which alcoholic liquor may be manufactured under a license granted under Sec. 12 ;

(*b*) sanction the construction and working of a distillery or brewery ; and

(*c*) establish or sanction the establishment of a warehouse wherein any excisable article may be deposited, bottled or kept without payment of duty.

Payment of duty on removal from distillery, brewery or place of storage

15. Without the sanction of the Financial Commissioner no excisable article shall be removed from any premises, distillery, brewery, warehouse or other place of storage established or licensed under this Act unless the duty (if any) imposed under Section 24 has been paid or a bond has been executed for the payment thereof.

Possession of excisable articles generally.

16. (1) The Local Government may by notification, prescribe a limit of quantity for possession of any excisable article.

(2) No person shall have in his possession any quantity of any excisable article in excess of the limit prescribed under Sub-Section (1), except under the authority and in accordance with the terms and conditions of—

(*a*) a license for the manufacture, cultivation, collection, sale or supply of such article, or

(*b*) a permit granted by the Collector in that behalf.

(3) Sub-section (2) shall not apply to any foreign alcoholic liquor—

(*a*) which is in the possession of any common carrier or warehouseman as such, or

(*b*) which is lawfully procured by and in the possession of any person for his *bona fide* private consumption and not for sale.

(4) Notwithstanding anything contained in the foregoing Sub-sections, the Local Government may, by notification, prohibit the possession of any excisable article or restrict such possession by such conditions as it may prescribe.

(*a*) to supply himself with such weights, measures and instruments as the Excise Commissioner may prescribe and to keep the same in good condition and ;

(*b*) on the requisition of any Excise-officer duly empowered in that behalf, at any time to weigh, measure or test any excisable article in his possession in such manner as the Excise-officer may require.

Prohibition of employment of persons under the age of sixteen years and of women.

22. (1) No person who is licensed to sell foreign alcoholic liquor or country spirit for consumption on his premises shall, during the hours in which such premises are kept open for business, employ or permit to be employed, either with or without remuneration, any person under the age of sixteen years in any part of such premises in which such alcoholic liquor or spirit is consumed by the public.

(2) No person who is licensed to sell foreign alcoholic liquor for consumption on his premises shall, during the hours in which such premises are kept open for business, employ or permit to be employed, either with or without remuneration, any woman in any part of such premises in which alcoholic liquor is consumed by the public.

Closing of shops for the sake of public peace.

23. The District Magistrate or, in Rangoon, the Commissioner of Police, by notice in writing to the licensee may require that any shop in which any excisable article is sold shall be closed at such times and for such periods as he may think necessary for the preservation of the public peace.

If a riot or unlawful assembly is apprehended or occurs in the vicinity of any such shop, a Magistrate of any class or Excise or Police officer above the rank of a peon or constable who is present may require such shop to be kept closed for such period as he may think necessary :

Provided that where any riot or unlawful assembly occurs, the licensee shall, in the absence of such Magistrate or officer, close his shop without any order.

(*a*) to supply himself with such weights, measures and instruments as the Excise Commissioner may prescribe and to keep the same in good condition and ;

(*b*) on the requisition of any Excise-officer duly empowered in that behalf, at any time to weigh, measure or test any excisable article in his possession in such manner as the Excise-officer may require.

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If a riot or unlawful assembly is apprehended or occurs in the vicinity of any such shop, a Magistrate of any class or Excise or Police officer above the rank of a peon or constable who is present may require such shop to be kept closed for such period as he may think necessary :

Provided that where any riot or unlawful assembly occurs, the licensee shall, in the absence of such Magistrate or officer, close his shop without any order.

CHAPTER V

DUTIES AND FEES

Duty on excisable articles

24 (1) The Local Government may impose a duty at such rate or rates as it thinks fit on any excisable article—

(*a*) imported, exported, or transported in accordance with the provisions of section 7, or

(*b*) cultivated, collected or manufactured under any license granted under section 11 or section 12, or

(*c*) manufactured in any premises established or in any distillery or brewery licensed under section 14

Provided that—

(i) duty shall not be imposed on any article which has been imported into British India and was liable, on such importation, to duty under the Sea Customs Act, 1878, or the Indian Tariff Act, 1894,

(ii) duty imposed on denatured spirit or beer manufactured in India shall, unless the Local Government with the previous sanction of the Governor General in Council otherwise directs, be equal to the duty to which denatured spirit or beer, as the case may be, when imported into British India by sea, is liable under the Indian Tariff Act, 1894

(2) Duty may be imposed under sub section (1) at different rates according to the places to which any excisable article is to be removed or according to the strength and quality of such article

Ways of imposing duty

25 A duty under section 24 may be imposed—

(1) on the quantity of excisable articles imported, exported, transported, cultivated, collected or manufactured in or issued from any premises established or distillery or brewery or warehouse licensed under section 14,

(2) In respect of spirit or beer or other fermented alcoholic liquor or beer [illegible] produced in Burma—

( ) on the quantity of material used in the production thereof, or

( ) with reference to the degree of attenuation of the wash or wort.

Rate of duty on stores from bond

26. Where payment is made under the [illegible] of an exciseable article or sale from a warehouse, it shall be at the rate of duty in force on the date of [illegible] such article from the warehouse.

Payment for warehouse

27. In [illegible] to any duty leviable under the Chapter as Financial Commissioner may accept payment [illegible] a sum in [illegible] the grant of any [illegible] under section 10.

CHAPTER VI

LICENSES, PERMITS AND PASSES

Power to cancel or suspend licenses.

28. (1) The authority which granted any license, permit or pass under this Act may cancel or suspend it in such circumstances as may be prescribed by rule in that behalf.

(2) When a license, permit or pass held by any person is cancelled under sub-section (1) any other licenses, permits or passes granted to such person under this Act or under any other law for the time being in force relating to excise revenue or under the Opium Act, 1878, shall be liable to cancellation.

(3) When a license, permit or pass is cancelled or suspended—

( ) the holder shall not be entitled to any compensation for its cancellation or suspension or to the refund of any fee paid or deposit made in respect thereof,

( ) a fee payable for the balance of the period for which such license, permit or pass would have been current but for such cancellation or suspension may be recovered from the [illegible] as if it were a fee, or, as the case may be, a [illegible],

(*iii*) a fresh license for the unexpired period or for the period of suspension may be granted in accordance with the provisions of this Act, or a manager to carry on the business during such period may be appointed by the Collector Provided that when the fee or duty realized on account of such fresh license or the profit derived from such management together with the amount recovered under clause (*ii*) exceeds the amount so recoverable the Collector may refund to the person from whom the recovery was made so much of the excess as does not exceed the amount actually recovered

Further power to withdraw licenses.

29 (1) Whenever the authority which granted any license considers that it should be withdrawn in circumstances which do not justify its cancellation or suspension under section 28, it shall remit a sum equal to the amount of the fees payable in respect thereof for fifteen days and may withdraw the license either on the expiration of fifteen days' notice in writing of its intention to do so, or forthwith without notice

(2) If any license be withdrawn forthwith without notice under sub section (1) in addition to the sum remitted as aforesaid, there shall be paid to the licensee by way of compensation such further sum as the Excise Commissioner may direct

(3) When a license is withdrawn under this section any fee paid in advance or deposit made by the licensee in respect thereof shall be refunded to him, less the amount, if any, due to Government

CHAPTER VII.

OFFENCES AND PENALTIES

Penalties for illegal import etc of excisable articles

30 Whoever, in contravention of the Act or of any rule, notification or order made or of any license, permit or pass obtained thereunder,—

(*a*) imports, exports, transports, manufactures, collects or possesses any excisable article , or

(*b*) save in the cases provided for in section 40 sells any excisable article; or

(*c*) constructs or works any distillery or brewery; or

(*d*) uses, keeps or has in his possession any materials, or apparatus whatsoever for the purpose of manufacturing any excisable article; or

(*e*) removes any excisable article from any premises, distillery, brewery or warehouse established or licensed under this Act; or

(*f*) bottles any alcoholic liquor for the purposes of sale; or

(*g*) cultivates the hemp plant, coca plant, or any plant specified as an intoxicating drug by notification under section 2 (*l*) (*iii*); shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Possession of Seinye—Vinegar—Whether Excisable article—Ss 12, 16, 30 (a)—

The Accused, the manager of a Chinese restaurant, had a license from the Collector for the manufacture of vinegar, and one of the conditions of the license was that he shall not keep in his possession at any one time fermented liquor exceeding 60 reputed quart bottles and that for the manufacture of vinegar only He was prosecuted for being in illegal possession of 228 quarts of 'Seinye' an offence under S 30 (a) Burma Excise Act He admitted that he was in possession of 228 quarts of vinegar The Excise Inspector gave evidence that the liquid seized by him was in a state of fermentation *i e*, it was seinye that was in process of conversion into vinegar It was not yet vinegar at the time of the seizure The Magistrate ought to have determined whether the 228 quarts of liquor at the time of seizure had really become vinegar or not If it had not become vinegar the Accused would be guilty of the offence charged, for he was not authorised to have more than 60 quarts, of 'seinye' at any one time in process of manufacture of vinegar. The Magistrate went out of the way and convicted him of doing an act in breach of the conditions of his license under S 41 (c), the breach attributed to him being the possession of more than 60 quarts of vinegar. Held, this is not a breach at all The licensee bound himself to use in his manufacture not more than 60 quarts of fermented liquor at a time, but he is not limited by the Act or Rules or by his license as to the quantity of completely manufactured vinegar that he may possess It is true vinegar has been declared under Notification No 70 (18—9—1917) to be alcoholic liquor for the purpose of S 12, and is

therefore an excisable article But S 12 relates only to manufacture Vinegar is not an excisable article for the purpose of S 16 or S 30 The conviction is wrong and is set aside

Yee Wan Vs Emp —9 L B R 277=50 I C 657

Liquor found in Sampan in separate bundles of bottles—Possession—Whether joint—S 30 (a) —

The Accused were caught in one sampan and in the sampan were found 36 quarts of Kazaw ye in nine bundles of four bottles each The second additional Magistrate of Rangoon convicted them all holding that they were in joint possession of 36 quarts As authority for this he quoted the case of Emp Vs Nga Pyu 36 I C 156 In that case two men were found carrying a pot containing eight quarts of country fermented liquor, and they were held to have been in joint possession of the 8 quarts This ruling followed the ruling of Q E Vs Rajia P J 405, where also there was a jar containing eleven quarts of toddy said to have belonged to different people

Held, on revision that the present case is not on all fours with the case quoted by the learned Magistrate When the liquor is placed in a jar it is impossible to say that one person is in separate possession of any one part of it The liquor, as it is being carried, shakes about in the jar, and it is clearly a fact that people, who have each put, say, four quarts into the jar, are jointly in possession of the whole contents of the jar

In the present case, the liquor was in 9 separate bundles of 4 bottles each and presumably each man was in possession of his own four bottles To hold that everybody in this sampan is in joint possession of all the contents would lay down a principle that all the passengers on an ocean liner are in joint possession of all the boxes in the passenger s baggage room—a finding which it would obviously be quite impossible to support

When the liquor of each person is kept separate, as in the present case, the owners of each portion of it are not in joint possession of the whole The convictions are set aside

Appayya and others Vs Emp —84 I C 551=26 Cr L J 327.

Liquor intended for bonafide private consumption—Whether person in possession liable—Ss 16 30 (a) —

The applicant was the manager of a Chinese store insured for Rs 60,000, and the firm employed 25 or 30 men , three cases of Chinese wine were sent to him quite openly as such from Rangoon just before the new year Kin Woon one of the proprietors of the Firm was a Roman Catholic who observed the New Year and the anniversary of the election of Dr Sun Yet Sen as President The applicant was prosecuted and convicted for having in his possession 3 cases of Chinese wine Held on revision "in these

I am inclined to believe that the liquor 48 quarts which does not seem excessive, was intended for the *bona fide* private consumption of the Firm and its employees at the New Year The remarks in the case of Emp Vs Maung Pwa are apposite Conviction reversed

Choo Kin Vs Emp —83 I C 522=26 Cr L J 42

Restaurant keeper selling beer without license—Proof of sale—S 30 (b) —

The applicant a restaurant keeper was convicted under S 30 (b) of the Excise Act for selling 2 bottles of beer without license

The defence of Accused was that he sent out for the 2 bottles of beer from a liquor shop to oblige his customers and that he did not sell the beer himself His defence was disbelieved by the Magistrate but there is no reason to disbelieve its truth The Excise officer sent 2 men with a five rupee note with instructions to buy beer and refreshments It seems clear from the Magistrate's remarks that they are almost professional excise witnesses One of them says they purchased edibles and the other says nothing about it, but one of them admits that they had to wait 25 minutes for their beer It must be therefore taken that they handed the money to the Accused when they purchased the other refreshments and asked him to get them some beer He accordingly sent out for 2 bottles of beer which he made over to them at cost price In doing so I am of opinion he has not been guilty of any offence His action does not amount to a sale of the beer Conviction set aside and the sentence

Ah Kuay Vs Emp —12 Bur L T 54=51 I C 769

Yeast balls—What are—Law regarding possession of yeast balls—
Ss 12 (c) 30 (d) —

Yeast balls are balls of flour soaked in the sap or juice of different plants, such as toddy tree roots kaing grass roots, and cocoanut roots, and a little sugar added and when they are mixed with rice water or jaggery, after three days or so there results or ferment as yeast which is used only for the manufacture of liquor and nothing else S 12 (c) of the present Excise Act says that no person shall use keep or have in his possession any materials or apparatus for the purpose of manufacturing any excisable article Yeast balls are materials for the purpose of manufacturing liquor and liquor is an excisable article Possession of them is therefore prohibited by S 12 (c) The law as regards yeast balls may be stated thus —Yeast balls are not excisable articles but as they are materials for the manufacture of an excisable article, namely, liquor the possession of them is prohibited by S 12 (c) and made punishable under S 30 (d) of the Act The conviction in this case was under 30 (a) It should have been under 30 (d)

The case of Q E Vs Nga Lu Gale S J L B 571 is absolute

Nan Ma Mya Vs Emp —(L B) 11 L B R 136=66 I C 665

Penalty for illicit distillation

31 Whoever, in contravention of this Act or of any rule, notification or order made or of any license, permit or pass obtained thereunder, manufactures any spirit shall be punishable with imprisonment which may extend to one year, or with fine which may extend to two thousand rupees, or with both

Penalty for offences in relation to cocaine drugs

32 Whoever, in contravention of this Act or of any rule, notification or order made or of any license, permit or pass obtained thereunder—

(*a*) imports, exports, transports, collects, manufactures, sells or possesses any cocaine drug, or

(*b*) uses, keeps or has in his possession any materials, or apparatus whatsoever for the purpose of manufacturing any cocaine drug,

shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both

Penalty for offences in relation to hypodermic syringes

33 Whoever, in contravention of section 13, makes, sells, possesses or uses—

(*a*) any hypodermic syringe or

(*b*) any other apparatus suitable for injecting any intoxicating drug,

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both

Penalty for altering or attempting to alter denatured spirit

34 Whoever—

(*a*) alters or attempts to alter any denatured spirit, whether manufactured in British India or not with the intention that such spirit may be used in any way whatsoever for human consumption, or

(*b*) has in his possession any spirit in respect of which he knows or has reason to believe that any such alteration or attempt has been made;

shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees or with both.

Presumption as to offence under section 34 in certain cases.

35. In prosecutions under section 34 where the accused person is proved to be in possession of any spirit which is, or contains, or has been derived from denatured spirit, and in respect of which any such alteration or attempt as is referred to in section 34 has been made, it may, from the mere fact of such possession, be presumed, unless and until the contrary is proved, that such person—

(*a*) has himself made such alteration or attempt, or

(*b*) knows or has reason to believe that such alteration or attempt has been made.

Presumption as to any spirit which contains any denaturant.

36. In any prosecution under this Act it may be presumed, unless and until the contrary is proved, that any spirit which contains any quantity of any denaturant is, or has been derived from, denatured spirit.

Penalty for possession of excisable article.

37. Whoever without lawful authority has in his possession any quantity of any excisable article, knowing or having reason to believe that the same has been unlawfully imported, transported, manufactured, cultivated or collected, or that the prescribed duty has not been paid thereon, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Possession of Tari in a place in which the law does not prohibit or place any restriction upon its manufacture—S. 37 :—

The Accused were convicted and sentenced to pay fines under S. 37 of the Burma Excise Act V of 1917. The charge in each case was that the Accused had been in possession of less than 4 quarts of 'Tari' which had been illegally manufactured, and that such possession was within 5 miles of a licensed 'Tari' shop. Held on revision that for the purpose of the present case, it is sufficient to point out that unfermented Tari has been declared to be alcoholic liquor, and that alcoholic liquor is included in the meaning of the term "Excisable article," while 'manufacture' includes the tapping of Tari-

producing trees and the drawing of Tari from trees—S 2 sub sections *a f* and *m* ! The monufacture of excisable articles is forbidden except under the nuthority and subject to the conditinns nf a license granted under the Act by S 12 (a) of the Act and by a notification nf the 'Financial department, No 72 dated 18th September 1917 the local Government has been pleased to exempt from the provisions of S 12 nf tbe Act Tari where the tree tax system is not in force The District Magistrate reports tbat the tree tax system is not in force in his District Tbe prnvisions nf S 12 (a) do not therefore apply to Tari ond tbere is no otber prnvision in the Act making its manufacture illegal S 37 of the Act provides a penalty for the possession of an excisable article wbich the person possessing it knows nr has reason to believe bas beeo unlawfully manufactured It is clear therefore that in a District in which the Law does not prohibit or place any restriction upon the manufacture of Tari, it cannot be unlawfully manufactured and S 37 does not apply to tbe possession of Tari manufactured in such a District

Emp Vs *Nga Po Kyan—47 I C 870*

Possession of 4 quarts of ka aw—Failure to account for possession—Legality of conviction—Ss *37 44* —

The Accused was found in possession of 4 quarts of Kazaw which he stated be purchased from a certain licensed shop The Magistrate found that he could not satisfactorily prove bis purcbase wbicb is tantamount to saying that be could not satisfactorily account for bis possession The Accused was found guilty under S 37 and sentenced to pay a fine

The District Magistrate contended that tbe conviction was wroog on grounds mentioned in bis order of reference — The Magistrate convicted the Accused holding tbat the burden nf proof was for tbe Accused to sbow that he purchased tbe kazaw from a licensed sbop and each purcbaser must be given a receipt sbowing that the kazaw purchased is from a liceosed sbop There is no provision in the Excise Act nr rules regarding tbe issue of receipts to purchasers According to the Act any person may possess four quart bottles of country fermented liquer

Held —The trial Magistrate held that the presumption allowed by S 44 must be drawn against the Accused as be cnuld not satisfactorily account for his possession and that he failed tn rebut tbe presumption Because tbe quantity was within the limit allowed fnr possession the Accused could not have been convicted under S 30 (a) nf the Act But S 37 provides that wbo ever without lawful authority has in his possession any quantity of excisable nrticle knowing or having reason tn believe that the same bas beeo unlawfully imported transported, manufactured cultivated or collected or tbat the prescribed duty has not been paid therenn shall be punishable Tbis section is directed against the illicit manufacture, importation etc , of *any* quantity

excisable article and it is, in the nature of things, necessary to provide for a presumption against n person in possession of on excisable article and throw on him the onus of proving that his possession is not illicit, as the matter would naturally be within his special knowledge. So the Legislature provides by enacting S. 44 that the presumption is, until the contrary is proved, that the Accused has committed, the offence charged under S. 37 in respect of *any* excisable article for the possession of which he is unable to account satisfactorily. The trial Magistrate has not grounded the conviction upon the fact that the Accused must produce, but has not produced a receipt from a licensed shop. What he said was "to my mind the only safe means to protect purchasers who take liquor home is to obtain a receipt from the vendor for every purchase." *Prima facie* this is not a bad suggestion. The conviction is correct. The proposition laid down in Q. E. Vs. Tun E, 1 L. B. R. 43 that possession of half a quart of country spirit is no offence and o man is oot bound to account for such mere possession is not wholly correct under the provisions of the present Excise Act.

Nga Han Kyi Vs Emp. (L.B.) 11 L. B. R. 134=66 I C. 514.

Penalty for keeping or knowingly permitting the keeping of place for selling alcoholic liquor or intoxicating drug.

38. (1) Whoever in contravention of this Act or of any rule, notification or order thereunder keeps or uses any place for the purpose of selling any alcoholic liquor or of selling or administering any intoxicating drug or knowingly permits any place owned or occupied by him or under his control to be kept or used for such purposes shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to two thousand rupees or with both.

(2) When any person is charged under sub-section (1) with permitting any place owned or occupied by him or under his control to be kept or used for the purpose of selling any alcoholic liquor or of selling or administering any intoxicating drug and it is proved—

(*a*) that any person has been convicted under sub-section (1) of selling any alcoholic liquor or of selling or administering any intoxicating drug in such place ;

(*b*) that a written notice of such conviction has been served by the Collector on the person owning or occupying or being in control of such place ; and

(*c*) that at any time within six months after the date of service of such notice such place has again been kept or used for

the purpose of selling alcoholic liquor or of selling or administering an intoxicating drug;

it shall be presumed until the contrary is proved that the person owning or occupying or being in control of such place knowingly permitted it to be kept or used for the purpose of selling alcoholic liquor or of selling or administering an intoxicating drug, as the case may be.

For offences not otherwise provided for.

39. Whoever does any act in contravention of any of the provisions of this Act, or of any rule, notification or order made thereunder and not otherwise provided for therein, shall be punishable with fine which may extend to two hundred rupees.

Penalty for certain unlawful acts of licensed vendors.

40. (1) If a licensed vendor or any person in his employ or acting on his behalf—

(*a*) sells or gives any excisable article to person who is (*i*) intoxicated, or (*ii*) apparently under the age of eighteen years; or

(*b*) employs or permits to be employed on any part of the licensed premises any person whom he is prohibited from employing under this Act; or

(*c*) permits intoxication, disorderly conduct or gaming on the licensed premises; or

(*d*) permits persons whom he knows or has reason to believe to have been convicted of any non-bailable offence, or who are reputed prostitutes to resort to or assemble on the licensed premises whether for the purposes of crime or prostitution or for any other purpose;

he shall in addition to any other penalty to which he may be liable be punishable with fine which may extend to five hundred rupees.

(2) When any licensed vendor or any person in his employ or acting on his behalf is charged with permitting intoxication on the premises of such vendor, and it is proved that any person was intoxicated on such premises, it shall lie on the person charged to prove that the licensed vendor and the persons employed by hi

took all reasonable steps for preventing intoxication on such premises.

Penalty for misconduct by licensees, etc.

41. If the holder of a license, permit or pass granted under this Act, or any person in the employ of such holder or acting on his behalf, intentionally—

(*a*) fails without good and sufficient reason to produce such license, permit or pass on the demand of any Excise-officer; or

(*b*) contravenes any rule made under section 65; or

(*c*) does any act in breach of any of the conditions of the license, permit or pass not otherwise provided for in this Act;

he shall be punishable in case (*a*) with fine which may extend to two hundred rupees, and in case (*b*) or case (*c*) with fine which may extend to five hundred rupees.

Penalty for consumption in chemist's shop, etc.

42. (1) If a chemist, druggist, apothecary or keeper of a dispensary allows any excisable article, which has not been *bona fide* medicated for medicinal purposes, to be consumed on his business premises by any person not employed in his business, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

(2) If any person not employed as aforesaid consumes any such excisable article on such premises he shall be punishable with fine which may extend to two hundred rupees.

Attempts to commit offences.

43. Whoever attempts to commit any offence punishable under this Act shall be liable to the punishment provided for the offence.

Presumption as to commission of offence in certain cases.

44. In prosecutions under section 30, section 31, section 32, section 33, section 37 or section 38 it may be presumed, until the contrary is proved, that the accused person has committed an offence under the section under which he is charged in respect of—

(*a*) any excisable article, or any apparatus for administering any intoxicating drug, or for the manufacture of any excisable article; or

(*b*) any materials which have undergone any process towards the manufacture of an excisable article, or from which an excisable article has been manufactured;

for the possession of which he is unable to account satisfactorily.

Liability of license holder for acts of employee or agent.

45. The holder of a license, permit or pass under this Act shall be liable to punishment, as well as the actual offender, for any offence under section 30, section 31, section 32, section 33, section 34, section 37, section 40 or section 41 committed by any person in his employ or acting on his behalf as if he had himself committed the same, unless he shall establish that all due and reasonable precautions were taken by him to prevent the commission of such offence:

Provided that no person other than the actual offender shall be punished under this section with imprisonment except in default of payment of a fine.

Enhanced punishment after previous conviction.

46. If any person after having been previously convicted of an offence punishable under section 30, section 31, section 32, section 33, section 34, section 37 or section 38 or under similar provision in any enactment repealed by this Act, is subsequently convicted of an offence punishable under any of these sections, he shall be liable to twice the punishment which might be imposed on a first conviction under this Act:

Provided that nothing in this section shall prevent any offence which might otherwise have been tried summarily under Chapter XXII of the Code of Criminal Procedure, 1898, from being so tried.

Things liable to confiscation.

47. Whenever an offence punishable under this Act has been committed,—

(*a*) all excisable articles, materials, or apparatus which are found at the place of the offence;

(b) all receptacles, packages or coverings in which the said excisable articles, materials or apparatus are packed or stored; and

(c) all animals, vehicles, vessels, or other conveyances used in carrying the articles mentioned in clauses (a) and (b);

shall be liable to confiscation:

Provided that when it is proved that the articles specified in clauses (a) and (b) are not the property of the offender they shall not be liable to confiscation, if the owner thereof establishes that he had no reason to believe that such offence was being or was likely to be committed.

Confiscation by order of Collector.

48. (1) Where at the trial of any person accused of any offence punishable under this Act the Magistrate decides that any thing or animal liable to confiscation under section 47, he may order confiscation or may give the owner of the thing or animal liable to be confiscated an option to pay such fine as he thinks right in lieu thereof.

(2) Where there is reason to believe that an offence punishable under this Act has been committed but the offender is not known or cannot be found, or when any thing or animal liable to confiscation under this Act and not in the possession of any person cannot be satisfactorily accounted for, the case shall be enquired into and determined by the Collector who may order confiscation:

Provided that no such order shall be made until the expiration of one month from the date of seizure of the thing or animal intended to be confiscated or without hearing the person, if any, claiming any right thereto and the evidence, if any, which he produces in support of his claim:

Provided further that, if the thing in question is liable to speedy and natural decay, or if the Collector is of opinion that the sale of the thing or animal in question would be for the benefit of its owner, the Collector may at any time direct it to be sold; and the provisions of this subsection shall, as nearly as may be practicable, apply to the net proceeds of such sale.

Power to compound offences

49. The Collector may accept from any person whose license, permit or pass is liable to be cancelled or suspended under section 28, or who is reasonably suspected of having committed an offence under section 39, section 40, or section 41, a sum of money in lieu of such cancellation or suspension or by way of composition for the offence which may have been committed, as the case may be, and in all cases whatsoever in which any property has been seized as liable to confiscation under this Act may at any time before an order of confiscation has been passed by a Magistrate release the same on payment of such amount as he may fix in this behalf

On the payment of such sum of money, or such amount or both, as the case may be, to the Collector, the accused person, if in custody, shall be discharged, the property seized shall be released and no further proceedings shall be taken against such person or property

For Excise officer refusing to do duty

50. Any Excise-officer who shall be guilty of any violation of duty or wilful breach of or neglect of any law or rule or lawful order made by competent authority or who shall withdraw from the duties of his office without permission or without having given previous notice in writing for a period of two months, or who shall be guilty of cowardice or who shall offer any unwarrantable violence to any person in his custody or who shall cause unwarrantable damage to any property in the performance of his duties shall be punishable with imprisonment which may extend to three months or with fine which may extend to three months' pay or with both

CHAPTER VIII

DETECTION, INVESTIGATION AND TRIAL OF OFFENCES

Duty of owners etc., to give information

51 (*a*) The owner, or occupier, and the agent of any owner or occupier of any place in or on which—

(*b*) every village headman in whose village-tract, and

(*c*) every ward-headman of a town in whose ward—any excisable article is cultivated, collected, manufactured or stored in contravention of this Act or of any rule, notification or order made thereunder shall be bound to give notice of the same to a Magistrate or to a Revenue, Police or Excise-officer as soon as the same has come to his knowledge.

Duty of officers to report and assist Excise officers.

52. Every Revenue, Police, Salt and Customs officer shall be bound to give immediate information to an Excise-officer of the commission of any offence punishable under this Act which may come to his knowledge, and to aid any Excise-officer in carrying out the provisions of this Act upon request made by such officer.

Power of entry and inspection.

53. An Excise-officer duly empowered in this behalf may—

(*a*) enter and inspect at any time by day or by night any place in which any licensed manufacturer carries on the manufacture of or stores any excisable article ;

(*b*) enter and inspect at any time during which sale is permitted and at any other time during which the same may be open, any place at which any excisable article is kept for sale by any licensed person holding a license under this Act ;

(*c*) examine accounts and registers and examine, test, measure or weigh any excisable articles, materials or apparatus found in the place ;

(*d*) seize and remove any apparatus which he has found to be inaccurate.

Powers of arrest and seizure

54. Subject to such restrictions as the Local Government may prescribe, any Excise or Police officer and any Revenue or Customs officer duly empowered in this behalf, may at any time by day or by night—

(*a*) arrest without warrant any person found committing an offence punishable under section 30, section 31, section 32, section 33, section 34, section 37 or section 38 ;

(*b*) seize, search and detain any excisable article or other thing or animal which he has reason to believe to be liable to confiscation under this Act or any other law for the time being in force relating to excise-revenue ;

(*c*) detain and search any person upon whom he may have reason to suspect any article which is so liable to confiscation to be.

Power to issue a warrant for arrest or search.

55. If a Collector or Magistrate has reason to believe that an offence under section 30, section 31, section 32, section 33, section 34, section 37, or section 38 has been or is likely to be committed, he may issue a warrant—

(*a*) for the search of any place in which he has reason to believe, that any excisable articles, materials, or apparatus in respect of which such offence has been or is likely to be committed are kept or concealed ; and

(*b*) for the arrest of any person who, he has reason to believe, has been or is likely to be engaged in the commission of such offence.

Power to search without a warrant.

56. If an Excise-officer duly empowered in this behalf has reason to believe that an offence under section 30, section 31, section 32, section 33, section 34 section 37 or section 38 has been, or is likely to be committed, and that a search warrant cannot be obtained without affording the offender an opportunity of escape or of concealing evidence of the offence, he may, at any time by day or night,—

(*a*) enter and search any place and may seize anything found therein which he has reason to believe to be liable to confiscation under this Act, and

(*b*) detain and search, and, if he thinks proper, arrest without a warrant any person found in such place whom he has reason to believe to be guilty of such offence

Powers of Excise officers in matters of investigation

57. (1) An Excise-officer duly empowered in this behalf may, as regards offences under section 30, section 31, section 32, section 33, section 34, section 37 and section 38 exercise powers similar to those

conferred on an officer in charge of a police-station by the provisions of the Code of Criminal Procedure, 1898;

Provided that any such powers shall be subject to such restrictions and modifications (if any) as the Local Government may by rule prescribe.

(2) For the purposes of section 156 of the said Code the area to which an Excise-officer is appointed shall be deemed to be a local area within the limits of a police-station, and such officer shall be deemed to be the officer in charge of the station.

(3) Any such officer, if specially empowered in that behalf, may, without reference to a Magistrate and for reasons to be recorded by him in writing, stop further proceedings against any person concerned or supposed to be concerned in any offence against this Act which he has investigated or which may have been reported to him.

Report by investigating officer.

58. If on an investigation by an Excise-officer empowered under section 57, sub-section (1), it appears that there is sufficient evidence to justify the prosecution of the accused, the investigating officer, unless he submits the case for the orders of the Collector under section 49 or proceeds under section 57, sub-section (3), shall submit a report (which shall for the purposes of section 190 of the Code of Criminal Procedure, 1898, be deemed to be a police-report) to a Magistrate having jurisdiction to enquire into or try the case and empowered to take cognizance of offences on police-reports.

Report by Excise officer.

59. When any Excise-officer below the rank of Collector makes any arrest, seizure or search under this Act, he shall, within twenty-four hours thereafter, make a full report of all the particulars of the arrest, seizure or search to his immediate official superior.

Arrest, searches, etc., how to be made.

60. Save as in this Act otherwise expressly provided, the provisions of the Code of Criminal Procedure, 1898, relating to arrests, detentions in custody, searches, summonses, warrants of arrests, search warrants, the production of persons arrested and the disposal of things seized, shall

be applicable as far as may be to all action taken in these respects under this Act:

Provided that the provisions of section 103 of the said Code shall not apply to searches of vessels made under this Act.

Search of premises—Search witnesses not belonging to immediate vicinity—Legality of search—S. 60.

This was an appeal against a conviction for being found in possession of opium. The defence was that it was planted The story was that the Excise Inspector, the Sub-Inspector, accompanied by an Excise peon and two respectable inhabitants of the locality raided the house in question and found its owner in possession of opium, which she took from her bodice jacket and tried to throw down the latrine The Excise Inspector was not called as a witness, and of the independent witnesses one lived two miles away from the house of the Accused and the other one mile away, but both were friends of the officer making the search Held that "the provision that the witnesses of the search should be inhabitants of the locality is intended to operate in favor of the Accused, and in a densely populated town like Rangoon means persons in the immediate vicinity, certainly not persons who live a couple of miles away and are friends of the officer making the search In my opinion, the search contravened the provisions of S. 103 Cr P. C, and for this reason and also because Inspector Lyoam was never called, I reverse the conviction."

Ma Hiway Vs Emp—26 Cr. L. J. 827=86 I. C. 475

Security for appearance in case of arrest without warrant.

61. (1) When a person is arrested under this Act otherwise than on warrant by a person or officer who is not empowered to grant bail, he shall be produced before or forwarded to—

(*a*) the nearest Excise-officer empowered to grant bail, or

(*b*) the nearest officer in charge of a police-station, whichever is nearer.

(2) Whenever any person arrested under this Act otherwise than on a warrant is prepared to give bail, and is arrested by, or produced in accordance with sub-section (1) before an officer empowered to grant bail, he shall be released upon bail or, at the discretion of the officer releasing him, on his own bond.

(3) When any such person is not prepared to give bail to the satisfaction of the officer concerned, he shall be sent with all convenient despatch to a Magistrate for trial.

(4) The provisions of sections 499 to 502, 513, 514 and 515 of the Code of Criminal Procedure, 1898, shall apply, so far as may be, in every case in which bail is accepted or a bond taken under this section.

Magistrate having jurisdiction to try offences.

62. No Magistrate of the third class who is not specially empowered by the District Magistrate in this behalf shall take cognizance of or try any offence under this Act.

Prosecution restricted.

63. (1) No Magistrate shall take cognizance of an offence punishable—

(*a*) under section 39, section 40 or section 41, except on the complaint or report of the Collector or of an Excise officer authorized by him in this behalf; or

(*b*) under any other section of this Act, except on his own knowledge or suspicion or on the complaint or report of an Excise or Police officer.

(2) Except with the special sanction of the Local Government, no Magistrate shall take cognizance of any offence punishable under this Act, unless the prosecution is instituted within six months after the date on which the offence is alleged to have been committed.

Form of sanction for prosecution by Collector—Ss. 41 (c), 63 (1) (a).—

Kaung Ki was convicted by the Head Quarters Magistrate, Shwebo, of an offence under S. 41 (c) of the Excise Act. S. 63 (1) (a) of the Act expressly provides that no Magistrate shall take cognisance of an offence punishable under S. 41 except on the complaint or report of the Collector or of an Excise Officer authorised by him in this behalf. In the present instance, the Collector on a report from the D. S. P., sanctioned the prosecution of the applicant, but did not pass an order authorising any particular Excise Officer to make a report or complaint. A report was then made to the Magistrate by a Sub-Inspector of Police.

Held that "the provisions of the law must be construed strictly, and in the present instance I must hold that the requirements of S. 63 (1) (a) have not been satisfied. If the Collector did not wish to make a report or complaint himself, it was for him to authorise some particular Excise officer to make a

report or complaint. A mere order sanctioning the prosecution on the report of the D. S. P. is not sufficient." Conviction set aside.

Kaung Ki Vs. *Emp.*—(U.B.) 3 U.B R. 197=56 I C. 436.

Power to require execution of bond

64. Whenever any person accused of any offence under this Act in respect of cocaine or any of the synthetics thereof is convicted of such offence before the Chief Court, a Court of Session or the Court of a District Magistrate, a Subdivisional Magistrate or (when he is specially empowered in this behalf by the Local Government), a Magistrate of the first class, and such Court is of opinion that it is necessary to require such person to execute a bond for abstaining from offences under this Act in respect of cocaine or any of its synthetics, such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for abstaining from such offences during such period, not exceeding three years, as it thinks fit.

If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

An order under this section may also be made by an Appellate Court or by the Chief Court when exercising its powers of revision.

The proceedings subsequent to the making of any order under this section shall be regulated as nearly as may be by the provisions of sections 120, 122, 123, 124, 125 and 126 of the Code of Criminal Procedure, 1898, as if such order had been made under section 106 of the said Code, and the provisions of sections 513, 514 and 515 of the said Code shall, so far as may be, apply to bonds executed under this section.

CHAPTER IX.

MISCELLANEOUS.

Power to make rules.

65. (1) The Financial Commissioner, subject to the control of the Local Government, may make rules for the porpose of carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, the Financial Commissioner, subject to the like control, may make rules—

(*a*) regulating the import, export, transport or possession of any excisable article ;

(*b*) regulating the manufacture, supply, storage or sale of any excisable article, including the character, erection, alteration, repair, inspection, supervision, management and control of any place for the manufacture, supply, storage or sale of such article, and the fittings, implements and apparatus to be maintained therein ;

(*c*) regulating the bottling of alcoholic liqoor for sale ;

(*d*) regulating the deposit of any excisable article in a warehouse, and the removal of any excisable article from any such warehouse or from any distillery or brewery ;

(*e*) regulating the periods and localities for which, and the persons or classes of persons to whom, licenses under this Act, may be granted, and regulating the number of such licenses which may be granted in any local area ;

(*f*) determining the limits of wholesale and retail sale respectively ;

(*g*) prescribing the procedure to be followed and the matters to be ascertained before any license for such sale is graoted for any locality ;

(*h*) prescribing the amount of security if any to be deposited by holders of licenses, permits or passes for the performance of the conditions of the same ;

(*i*) prescribing the scale of fees, or the manner of fixing or determining the fees payable in respect of any privilege, license, permit, or pass, or in respect of the storing of any excisable article ;

(*j*) regulating the time, place and manner of payment of any duty or fee ;

(*k*) prescribing the authority by, the restrictions under and the conditions on which any license, permit or pass may be granted, cancelled, suspended or surrendered and the form thereof, including—

(i) the prohibition of the admixture with any excisable article of any substance deemed to be noxious or objectionable;

(ii) the regulation or prohibition of the reduction of alcoholic liquor by a licensed manufacturer or licensed vendor from a higher to a lower strength;

(iii) the fixing of the strength, price or quantity in excess of or below which any excisable article should not be sold or supplied and the prescription of a standard of quality for any excisable article;

(iv) the prohibition of the employment by a license-holder of any person or class of persons to assist him in his business in any capacity whatsoever;

(v) the prohibition of the sale of any excisable article to any person or class of persons;

(vi) the prohibition of sale except for cash;

(vii) the prevention of drunkenness, gambling or disorderly conduct in or near any licensed premises, and of the meeting or remaining of persons of bad character on such premises;

(viii) the prescription of the days and hours during which any licensed premises may or may not be kept open, and provision for the closing of such premises on special occasions;

(ix) the prescription of the nature of the premises in which any excisable article may be sold, and the notices to be exposed at such premises;

(x) the prescription of the accounts to be maintained and the returns to be submitted by license-holders; and

(xi) the prohibition or regulation of the transfer of licenses;

(*l*) with regard to the denaturing of spirit;

(i) for declaring the substances with which and the processes by which spirit shall be denatured ;

(ii) for causing spirit to be denatured through the agency or under the supervision of such officers as may be prescribed ;

(iii) for ascertaining whether spirit has been denatured ;

(v) providing for the destruction or other disposal of any excisable article deemed to be unfit for use ;

(x) regulating the disposal of confiscated articles ;

(y) regulating the grant of expenses to witnesses.

Publication of rules and notifications.

66. All rules made and notifications issued under this Act shall be published in the Gazette and shall thereupon have effect as if enacted in this Act.

Recovery of Government dues.

67. (1) All monies due to Government under this Act may be recovered from the person primarily liable to pay the same or from his surety (if any) as if they were arrears of land revenue.

(2) When action has been taken under section 25 the Collector may recover, in any manner authorized by sub-section (1) of this section, any money due to the holder of the cancelled license, permit or pass by any lessee or assignee.

(3) All such monies together with any losses incurred by Government through the default of any license-holder under this Act shall be a first charge upon any distillery, brewery, warehouse, shop, buildings, fittings, apparatus, or stocks of excisable articles or materials for manufacture of the same held in or upon any distillery, brewery, warehouse or shop premises, which, except with the written consent of the Collector, shall not be liable to be taken in execution of a decree or order of any Court until such monies or losses have been paid.

Bar of actions.

68. No action shall lie in any civil court against the Secretary of State for India in Council, or against any Excise-officer for damages for any act, in good faith done or ordered to be done in pursuance of this Act, or any law for the time being in force relating to excise-revenue.

Time within which prosecutions may be instituted.

69. All prosecutions of any Excise-officer, and all actions which may be lawfully brought against the Secretary of State for India in Council or against any Excise officer, in respect of anything done in pursuance of this Act, shall be instituted within six months from the date of the act complained of and not afterwards.

Repeal

70. The enactments mentioned in the Schedule are repealed to the extent specified in the third column thereof.

SCHEDULE.

(*See section* 70)

ENACTMENTS REPEALED.

No. and year	Short title or subject	Extent of repeal
ACTS OF THE GOVERNOR GENERAL IN COUNCIL.		
XVI of 1863 ..	The Excise (Spirits) Act, 1863	The whole so far as it affects Burma.
VIII of 1894 ...	The Indian Tariff Act, 1894	Section 6
XII of 1896 ...	The Excise Act, 1896 ..	The whole so far as it affects Burma
VII of 1906 ...	The Excise (Amendment) Act, 1906 ...	The whole so far as it affects Burma.
ACT OF THE LIEUTENANT-GOVERNOR OF BURMA IN COUNCIL.		
III of 1904 ..	The Burma Excise Law Amendment Act, 1904 ..	So much as is not already repealed

Cases decided under the Bihar and Orissa

ACT II OF 1915.

Cases decided under the Bihar and Orissa

ACT II OF 1915

Removal of liquor from Warehouse—Offence—S 47 (h) —

The petitioner M was a clerk in the liquor warehouse or depot at Gopalganj On the evening of 13-7-1918, he was seen coming out of the warehouse office with something wrapped up in a cloth under his arm He went to the water tank which adjoins the warehouse and left this bundle there Shortly afterwards he handed over the bundle to one Sukat Kurmi, a cooly working at the depot and asked him to take it to his house Sukat started for the house of the Accused, but was arrested by the Excise Sub Inspector The bundle was opened and was found to contain a bottle of liquor 64 6 overproof The Excise Sub Inspector sent up a report asking for the prosecution of the petitioner M and Sukat under S 47 (h) of the Excise Act The Sub Divisional Magistrate started the prosecution under 47 (a), 47 (h) and 55 and sentenced M to a fine of Rs 200 or in default to 1 M R I

The first point urged in revision was that the report of the Sub Inspector, prosecution was asked for only under S 47 (h), that the report did not disclose any offence under 47 (a) and that under S 87, the Magistrate had no jurisdiction to take cognisance of an offence under S 47 (a) and 55 Held, that it is true that in Col 6 of the S I s report he asked only for prosecution under S 47 (h) for the illegal removal of the bottle of country spirit from the warehouse, but from Col 8 it is clear that offences under S 47 (a) and 55 were also disclosed because in this Col it is stated that the liquor was made over by the petitioner to Sukat and further that it was made over at the depot well

The next point urged is that the conviction under 47 (h) is bad inasmuch as the Magistrate made use of the presumption created by S 48 It is conceded that S 48 does not apply in a case of removal of liquor But it is clear from the evidence recorded that the Accused removed the liquor from the depot office The depot office is apparently the same place as the warehouse office and appears to be a part of the warehouse The removal therefore was from the warehouse. There is no reason to interfere with the order of the Magistrate, and the sentence is not unduly severe.

(Pet) Mahabir Singh v. Emp.—51 I C

Finding of cocaine —Exclusive possession not proved—S 47 (a) —

The petitioner a rich Marwari and the proprietor of 3 shops was convicted of illegal possession of cocaine It appeared that at the time of the search, the Excise Sub Inspector took with him a large number of persons and that the cocaine was discovered on a shelf, two or three cubits from the western door leading to the verandah The Marwari had a number of servants working under him

Held on revision that the servants of the petitioner had equal right of access to the shelf From the position of the shelf, it was equally accessible to outsiders That being so it is impossible to convict the petitioner It is well established and is an elementary rule founded on common sense that where the place in which an article is found is one to which several persons have equal right of access it cannot be said to be in the possession of any one of them

Ramachandra Marwari Vs Emp —(Pat) 21 Cr L J 172=54 I C 780

Possession of Excisable articles during transit —Landing in a different province— Whether offence—S 47 —

The Accused had with them a pass granted by the Collector of Ballia to import 4 seers of ganja and 4 seers of bhang from Ballia to Ujiar in Ballia District in the U P They got into a steamer which left Ballia and arrived at the Buxar Ghat There they had to get down as the steamer did not go to Kotewah the nearest ghat for Ujiar This place is in a District in the neighbouring Province of Behar In the meantime, two Excise Peons arrived and the Accused of their own accord showed them the excisable articles and told them that they were going to Kotewah They were taken to the Excise officer who sent his report to the Magistrate stating that the Accused were guilty of having unlawfully imported excisable articles into Buxar in the Province of Bihar and Orissa They were put on their trial and convicted, the Magistrate holding the view that if the plea of the Accused were accepted, smuggling into Bihar would be facilitated (Their plea was they were merely in transit and the possession of excisable articles was not with any intention of fraud)

Held on revision S 47 (a) of the present Act II of 1915 of Bihar and Orissa applies where a person in contravention of the Act or any rule made thereunder imports or possesses an excisable article Under S 48, the onus is upon the Accused to account for possession of such article S 9 states that no excisable article shall be imported unless the local Government has given permission for its import Import under S 3 Cl 12 means ' to bring into the Province of Bihar and Orissa Now, did the Accused bring the excisable

articles in question in Buxar or did they possess them illicitly In my view they did not import or possess the article illicitly in this Province simply for the reason that they did not intend to do so They were simply carrying the articles with the purpose of importing them into the destination for which they had a proper and authorised license, and not into the Province of Bihar, Supposing they had not landed at Boxar and that the steamer was going to Kotewah direct and in the course of the journey plied on this side of the mid stream of the river, which for administrative purposes is the boundary of the two Provinces, could they then have been said to have imported the excisable articles into this Province? In my opinion, they could not, unless there was anything to show by their conduct or otherwise that they wanted to take advantage of their possession of the articles in question Their possession during the route *bona fide* taken by them for the purpose of conveying the articles to Kotewah was just the same as that of a carrier including the steamer-man or the boat man Their possession having been accounted for, the conviction is illegal"

(Pat) Mulchand Ram Kalvar Vs Emp
1 P L T 82=67 I C 99=2 U P L R 37.

Case decided under C. P. Excise Act II of 1915

Possession of apparatus and manufactur —
Separate sent nces—S 34 (a) (f) —

Certain apparatus for the distillation of spirit was found in the house of the applicant and some parts of it were found to contain fermented Mahua and Mahua spirit which was not of Government manufacture These fact established that he was in possession of apparatus for the manufacture of Mahua spirit which is an excisable article, and also that he had manufactured that article He was convicted of the offence of manufacturing an excisable article, mentioned in Cl (a) of S 34 of the C P Excise Act 1915, and also of the offence of possessing materials for such manufacture mentioned in Cl (f) of the same section For each offence he was sentenced to 6 weeks R I with an express order that the 2 periods of imprisonment shall not be concarrent

For the applicant it was conterded that the offence of manufacture necessarily includes that of possession and the 2 offences cannot be called "distinct" for the purpose of S 35 Cr P. C Held " the proposition appears to be sound, and was accepted by Parsons and Raoade, JJ, in Q E *Vs* Bhawa Sardar 1 Bom L R 344 apparently as almost self evident The possession of distilling apparatus is in its essence no offence but merely evidence of the offence of illicit distillation, but it is such strong evidence and further evidence is so often difficult to procure that the possession has been made itself an offence But to pass separate sentences for the two offences is like passing separate sentences for assault, causing hurt, causing grevious hurt, and murder on a man who killed another '

(Nag) Sheik Munir Vs Emp —A I R (N) 32=25 Cr L J 83

Miscellaneous cases decided under Excise Act XII of 1896

Which was in force in Punjab; U. P.; Lower Burma; Upper Burma etc., before the introduction of the present Acts.

Ser—Weight of, what is —

By S. 19 of Act X of 1871, it is enacted that the quantity of country liquor unlicensed vendors may sell shall not be more than one "seer." The two accused were convicted of being illegally possessed of more than one seer of country spirits. The Sessions Judge reversed the conviction on the ground that a seer of the Bareilly weighmeot which is frequently used in weigbment of spirits, and accepted as a proper seer, contains nearly 95 tolas, while the quantity traced to the Accused was nearly 95 tolas of the Sirkari weight. On appeal, it was contended by Government that the seer is the standard of weight mentioned in S 2, Act XI of 1870 and which "shall be a weigbt of metal in the possession of the Government of India which weight, when weighed in a vacuum is equal to the weigbt known in France as the "Kilogramme des Archives." Held that the definition was unintelligible to the natives of this country, and the contention of the Government that a seer was equivalent to 80 tolas would not supersede the customary weight of a seer weigh which was 95 tolas The practical view of the matter taken by the Judge is reasonable and tangible. The excess of one tola over the local weigbt was not sufficient to warrant the presumption of the Accused's guilt

Emp Vs Cheda Khan 3 All 404.

Kazawye—Whether fermented liquor —

Kazawye, a generic term for fermented liquor, has not been declared to be included in the term "fermented liquor" as defined in S 3 h of the Excise Act. In convictions under that Act for the illegal possession of fermented liquor, it is essential to prove that the fermented liquor is one of those within the meaning of the term as used in the Act.

Nga Pya Gyi - I L B R 172

Tapping tari tree or leaving sweet tari to ferment—Whether manufacturing liquor—S 45 —

Where the Accused was convicted of manufacturing tari, held that tapping a tari tree is not manufacturing tari and (2) leaving sweet tari to

ferment is not manufacturing also as sweet tari, is fermented liquor within the meaning of the Act the moment it is tapped Therefore the offence of manufacturing fermented liquor is a physical impossibility.

U B R Ex 3 (1905)

Hastening fermentation by artificial means—S 45 —

Where artificial means is used to hasten the fermentation of what is already fermented liquor, and to preserve it or to make it more palatable, held that it does not amount to making or manufacturing fermented liquor under S 45 Manufacture means the conversion of raw material into something else by some artificial process

U B R Ex 5 (1905)

Extracting tari if offence —S 45 —

Where the Accused extracted the sap of a tari tree, held he cannot be said to have manufactured fermented liquor and that he cannot be convicted under S 45 of the Act

L B R. 336 (1893—1900)

Possession of liquor —

Beer manufactured at the Mandalay Brewery should be deemed to be foreign fermented liquor according to Commerce and Finance Department notification No 42 dated 26—6—1890 Under S 3 Cl (k) of Act XII of 1896, a person can legally possess 2 imperial gallons or 12 reputed quart bottles of foreign liquor or fermented liquor Therefore possession of such beer within the above said limits is not an offence

U B R Vol I 92—(1892—1896)

Selling liquor to European soldiers —

It is a condition of Excise License Form VIII that the licensee shall not sell or dispose of liquor to European soldiers But to supply liquor to European soldiers travelling under the command of an officer, as provided in Art 542 Army Regulations India Vol X or to soldiers travelling alone or in small parties without an officer as provided in S 543 is not a breach of the condition of license

Abdool—I U B R Ex I (1902—1903)

Selling charas in bond to an unlicensed purchaser—Ss 20 21, 49 —

The applicant who held a "sale in bond" charas license was fined under S 49 of the Excise Act XII of 1896 for selling charas in bond to one D M who had no license of any kind for purchase or sale of the drug It was admitted that the charas in question remained in bond in the hands of the

Excise authorities and that the parties understood that D M could not obtain delivery and possession without taking a license S 49 prescribes a penalty for the sale in contravention of S 21 of a drug and S 21 forbids the sale of a drug except under a license

Held "one of the conditions of the license is that charas shall not be sold to any one not holding one or other of the kinds of license provided for in rule 12 or a permit of one or other of the kinds referred to in rule 4 Having regard to the facts stated it cannot be held that any breach of the license was committed by the applicant For the purpose of the Act the sale would not be complete until delivery of the charas to the purchaser or someone on his behalf, and to an unlicensed person delivery was not effected by retention in bond in the hands of the Excise authorities on behalf of a person who could not obtain delivery until he took out a license To hold otherwise would be to strain the law unduly against the subject The case is on all fours with payment of price on Sunday and delivery on Monday of liquor the sale of which on Sunday was illegal

Dhanpat Vs Emp 4 P R 1911=10 I C 682

Joint possession of 8 quarts of country fermented liquor—Liability—S 51 —

Two persons were found carrying a pot containing 8 quarts of country fermented liquor and were prosecuted under S 51 of the Act When the particulars of the offence were explained to them they said that each of them had bought four quarts from the licensed shop and that they were carrying it home for a Nat festival The Magistrate convicted them holding that S 51 prohibited their joint possession of more country fermented liquor than could be sold retail to one person *i e* four quarts

Held on reference to the Full Bench that if two persons having bought 4 quarts of liquor put them together and carry them home each of them is in contemplation of Law in possession of the whole The Magistrate rightly convicted them

Emp Vs Nga Pyu and another L.B 36 I C 156

Possession of more than 4 quarts of tari without licens —Ss 45 51 —

A person may tap and draw tari from his own toddy tree without committing no offence punishable under S 45 but the moment he is in possession of a quantity of it more than four quarts he commits an offence under S 51, unless he has a license contemplated by S 30

Nga Kan Ngin—1 L.B R 214

Possession of 54 bottles of beer and 24 pints of brandy—Whether offence—
Meaning of Ss. 30 (1) and 30 (2) (a) explained —

The Accused Gu Wa a leading and rich Chinaman who could well afford to buy one or two hundred rupees worth of liq or for festive occasions was

charged with being in possession of a large quantity of beer and brandy bottles just before the annual Chinese festival.

Held that S. 30 of the Excise Act permits a man to have in his possession without pass or license the quantity of spirit or fermented liquor "specified in Cl. (n) of S. 3 (1) in respect of such spirit or liquor." The quantity specified in Cl (n) in respect of foreign spirit is 12 quarts and the meaning of S. 30 (1) is that a man may possess that quantity of foreign spirit without reference to any other kind of spirit or liquor in his possession. . The section may be read as permitting a man to possess without pass or license 12 reputed quart bottles of foreign spirit, 12 reputed quart bottles of foreign fermented liquor, one reputed bottle of country spirit, and 4 reputed quart bottles of country fermented liquor, all at the same time

Cl. (a) of S. 30 (2) cannot mean that a man may keep foreign spirit for his private use without a pass or license, only if he has no foreign fermented liquor in his possession at the same time. If such an interpretation were correct, every European resident who has say, a case of beer (4 dozen) and one bottle of whisky in his house at the same time would be liable to prosecution.

Held, that with reference to 54 bottles of beer and 24 pints of brandy, Accused was *prima facie* entitled to the benefit of the exceptions in Cl. (a) of S. 30 (2); and as regards the 144 bottles of beer ordered for other persons, he committed a technical offence.

Emp. Vs *Gu Wa—4 Bur. L.T. 146=12 I.C. 845.*

Intoxicating drug—Hemp—Possession of—Excise Superintendent whether Police Officer—Ss. 18, 48 (1)(d).—

The Accused was found in possession of a bottle supposed to be a mixture of intoxicating drugs. The Chemical Examiner reported that the contents appeared to be Majun or sweetmeat prepared with Indian hemp. The Accused was convicted under S. 48 (1) (d).

Held on appeal that the Excise Act did not render the possession of hemp punishable, but only the possession of ganja, bhang, or charas, or any preparation or admixture of the same. Ganja,. bhang and charas are the narcotic products of hemp. Unless ganja, bhang and charas represent all the parts or products of the hemp-plant from which Majun can be prepared, Majun or sweetmeat prepared with Indian hemp is not necessarily an intoxicating drug within the meaning of S. 18.

2. Possession to be punishable must be with knowledge and assent.

3. The Excise Superintendent is a Police Officer, (Lower Burma) and S. 25 of the Evidence Act absolutely bars proof of an incriminating statement made to him.

V. R. Venkatram Chetty Vs *Emp.—(L.B.) 4 I.C. 498.*

Possession of Seinbat—Whether attempt or preparation—S 45 —

The Accused was found in possession of 3 viss of 'Seinbat intended for the manufacture of 'Seinye which is a kind of country fermented liquor 'Seinbat' is not country fermented liquor and the mere intention to commit the offence of manufacturing country fermented liquor is not punishable nor could the accused be convicted of an attempt to manufacture since he had not proceeded beyond the stage of mere preparation

Emp Vs Nga Kyaw 14 Cr L J 489=20 I C 745

Possession of spirits within the quantity allowed by law —

Possession of half a bottle of spirit is no offence and a man is not bound to account for such mere possession

1 L B R 43

Setting up a Still—Proof of possession—whether conclusive—S 51 —

The petitioner W and his son S, Lambardars, were convicted under S 51 of the Act, and fined Rs 50 each The articles discovered on a search instigated by an informer were (1) 9½ seers of Lahan, (2) a distilling pipe and (3) a bottle and glass containing a little liquor They were discovered under a Bhusa heap in the far corner of cattle shed owned by the Lambardar and which would usually remain open It appeared in evidence that a man named Ishar insisted on search of this particular shed and he was a recognised enemy of the petitioners No other incriminating articles were found in any part of the dwelling house

Held that there was very great doubt that the Lambardar himself had ever set up a still, and it should not be hastily assumed that either he or his son are guilty merely because things of the kind have been found in an easily accessible part of his property

Wasakhi Vs Emp —43 P W R 1913=22 I C 752

Joint trial of possessor and seller of cocaine whether legal—Possession by wife or mistress—Presumption—Ss 48 53 —

The Police received information that cocaine was being illicitly sold in a certain house in Delhi An organised raid was made and in one room, a man S was found sitting on the floor with a pair of scales and a packet of cocaine, and in a room the door of which was locked, but was opened with the aid of a key produced by a widow who occupied the room more cocaine was found The widow was the permanent mistress of B S and B were convicted under S 53 and sentenced to imprisonment Held that where the illicit possession of cocaine by one is unconnected with its sale by another, their joint trial under Ss 48 and 53 is illegal and a conviction based on such trial should set aside notwithstanding that the Accused raised no objection to the trial

When a man furnishes a house for his mistress occupation, he may reasonably be presumed to be in possession of all articles therein which can reasonably be inferred to belong to him or to be in the possession of his mistress on his behalf But this inference does not apply equally to articles which the mistress is in possession illegally or contrary to the provision of law, especially when the article in question is such that the latter might well remain in ignorance that it was in his mistress' possession The prosecution in cases of this kind must prove something more than mere possession by the wife or mistress

Banwari Lal Vs Emp 25 P W R 1914=22 I C 748

Joint possession—S 51 —

S 51 of the Excise Act prohibits the joint possession by several persons of more spirit or liquor than may be sold retail to one person The words "no person as used in S 51 are to be read in the plural as well as in the singular

L B R 405 (1893—1900)

Joint possession of spirits—S 51 —

In all cases where the defence of joint possession of father and son is put forward, it must be clearly proved that a certain number of people lived in the house, that they joined in the purchase of the drug and that it was held by one for the use of all

Wazir Singh 10 P R 1901

Possession of 8½ qts of toddy in pots on trees—Conviction under S 51 Burden of proof —

The Accused was working 2 toddy trees and early one morning the Excise Officer found ten pots in the trees i e pots hung under the tapped portion of the trees to catch the sap These pots contained 8½ quarts of toddy Accused was held to be in possession of this amount and was convicted under S 51 of the Excise Act and fined Rs 20

Held on review that being in possession of the trees and the pots he is in possession of the 'tari in the pots whatever the quantity may be for he knows that the result of affixing the pots is that they will receive "tari and it is his business to know the maximum quantity likely to be received If the pots on examination are found to contain more than four quarts, he is liable to prosecution, but he can rebut the charge by proving that owing to exceptional unforeseen circumstances the quantity received in the pots was unusually great and that under normal conditions the quantity received would not exceed four quarts The burden of proving any such circumstances would clearly lie on the accused under S 105 I E A There is no reason to interfere with the conviction

Emp Vs Nga Au (L B) 16 Cr L J 670=32 I C 654

Possession—Burden of proof —

When a person charged with having in his possession any quantity of fermented liquor larger than that specified in S 3 (1) (n) of the Act pleads that he purchased it for his private use and not for sale, the onus lies on him to prove this fact and not on the prosecution to prove that it was not so purchased

Emp Vs Maung Pua 2 I C 543=5 L B R 52

Illegal possession of liquor—Burden of proof —

Where the Accused was found in possession of more than a prescribed number of quarts of beer which was *prima facie* illegal, held that the onus lay on the Accused to prove that he purchased the beer for his private use and not for sale

1906 U B R 30 (Excise)

Import of foreign liquor—S 46 (c) —

The bringing in of any quantity of foreign liquor into any territory to which the Act applies is illegal and punishable under Act XII of 1896, S 46 Cl (c), irrespective of the quantity or purpose for which it may have been brought

14 P R 1907

Importing cocaine by Post—Immediate conduct —Presumption—S 48 (e) —

A Postal registered parcel containing 32 bottles of cocaine and a few toys addressed to Accused s daughter Elsie, a girl of 10, to a house in which the Accused was not living at the time was received by appointment by the Accused from the heat Postman It remained unopened for 10 minutes when the Excise officers who had already had information from the Post Master, entered and arrested Accused for importing cocaine She pleaded that she had ordered toys for her girl, that she took delivery thinking it to be the expected one, that she had given her friend s address as she contemplated moving there and that she hesitated to open the parcel at once as the senders name written on the parcel was unknown to her She offered no proof of any of these facts which were peculiarly within her knowledge altho' the burden of proof lay on her

Held that the natural course for any one would be to satisfy her child s curiosity by opening it at once, and under the circumstances, the Accused must be presumed to have known that the contents of the parcel were what they were Acquittal of the Accused by the Magistrate set aside and Accused sentenced to 3 M R I under S 48 (e)

Emp Vs Steffa—(Bur) 14 Cr. L.J 440=20 I.C.

License holder permitting drunkenness in the shop—Liability—Prosecution instituted by Police Sub Inspector—S 52 —

The petitioner was holder of the licence of a liquor shop at Twante He was convicted by the First Class Magistrate of Twante of an offence under S 50 of the Excise Act in that he permitted drunkenness in his shop He contended in revision that there was no complaint or report of the Collector or of an Excise Officer as required by S 57 and that the prosecution was instituted by a Sub Inspector of Police who was not an Excise Officer except for purposes of Ss 36, 37 and 38, secondly that he ought not to have been convicted of an offence which occurred during his absence

Held that S 50 is not one of the sections mentioned in S 57 among those in respect of which a report or complaint of the Collector or an Excise Officer is necessary

As regards ground No (2) held by the full Bench that a liquor licensee is responsible under S 50 of the Act for the default of his servants in permitting drunkenness in his shop without his knowledge Under the Excise Act, the licensee is considered to be the person who sells the liquor and he is the person responsible for preventing drunkenness on the premises, altho' it must have been contemplated from the nature of the business that he would frequently employ servants to sell the liquor for him and to be in charge of the shop If the licensee does so, the acts of his servants are taken to be his acts and if his servants permit drunkenness on the licensed premises, he (licensee) has committed the offence under S 50 To sum up the licensee's position — he must do his best to prevent drunkenness on the licensed premises *e g* he must not leave the shop open without a competent person in charge and he is responsible for the acts of his servants *e g* if he leaves a competent person in charge and that person permits drunkenness, the licensee is responsible

Q E Vs Tyab Alli 24 Bom 423 } *Quoted*
Babu Lal Vs Emp 34 All 319 } *Nga Shin Gyi Vs Emp—L B 41 I C 977*

Illegal search—conviction —

Held that an Accused person may be convicted of an offence under S 45 of Act XII of 1896 although his house was entered and searched by the Excise officers without legal authority Such persons who make illegal searches may render themselves liable to be sued for damages civilly, but their illegal action does not affect the question whether the house owner committed an offence against the Excise Laws or not In such cases the Court may properly refuse a reward upon conviction

L B R 369—(1893—1900)

Shopkeeper breach of lease Commissioner whether a suit for damages will lie against Secretary of State—Ss 25 26 27 —

L obtained a farm for a fixed term on payment of a large sum of money The farm included 9 shops as specified and one shop was closed by order of the Deputy Commissioner under instructions from the Excise Commissioner L then sued the Secretary of State for Rs 8 630 for loss arising from breach of contract

Held that the Civil Court had no jurisdiction to entertain the suit L obtained the lease under S 25 (1) (a) Act XII of 1895 In the fourth clause the farmer is prohibited from keeping retail shops other than those specified in the list annexed and no site can be changed without permission of the Collector According to S 23 the farmer is authorised to grant licenses for retail sale subject to such reservation as the Collector with the sanction of the Chief Revenue authority may from time to time make or impose Under S 26 the Collector with the sanction of the Chief Revenue authority may cancel any farm under the Act S 27 empowers the Chief revenue authority to award such compensation to the farmer as it thinks fit in the event of any reservation

Lalu Ram Vs The Secretary of State for India—13 I C 566

Penal Code S 201 Causing disappearance of evidence —

A breach of the provisions of the Excise Act is not included in the term "offence as used in S 201 I P C (causing disappearance of evidence of an offence) as such a breach is not punishable with imprisonment for a term of 6 months or more

I a Pyu—1 L B R 308

Sale of liquor to wife of European Sub Conductor without license—whether offence—S 14 Cantonments Act

A Sub Conductor in the Commissariat Department is not a 'Soldier within the meaning of S 14 of the Cantonments Act therefore the sale of liquor to the wife of a European Sub Conductor without a license required by S 14 is not an offence against that Section

Q E Vs D Franji—3 All 214

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